

# Town of Monson Zoning Bylaw

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## **SECTION 1.0 PURPOSE AND AUTHORITY**

### **1.1 PURPOSE**

These regulations are enacted to promote the general welfare of the Town of Monson, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, and to increase the amenities of the town, all as authorized by, but not limited to, the provisions of the Zoning Act, M.G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808.

### **1.2 AUTHORITY**

This Zoning By-Law is enacted in accordance with the provisions of the General Laws, Chapter 40A, any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

### **1.3 SCOPE**

For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town of Monson are regulated as hereinafter provided.

### **1.4 APPLICABILITY**

No division nor subdivision of any lot or parcel of land shall be made in such a manner as to make any lot thus set off, or the remaining portion of said lot or parcel, or the location of any building on such lot or remainder thereof, non-conforming to this Bylaw. No building shall be used, and no building shall be erected, altered, or changed in use, except in compliance with this Bylaw, but this shall not prevent the continuance of lawfully existing use of building which existed on the effective date of this Bylaw. Construction or operations under a building or special permit shall conform to any subsequent changes in the Zoning Bylaw unless the construction or use is commenced within one (1 ) year after issuance, and in cases of construction, unless such construction is continued until completion as continuously and expeditiously as possible. Special Permits shall lapse after one (1) year if a substantial use thereof or construction thereunder has not sooner commenced. The one (1) year period shall not include the time required to pursue or await determination of an appeal.

### **1.5 AMENDMENT**

This By-Law may from time to time be changed by amendment, addition, or repeal by the Town Meeting in the manner provided in M.G.L. c. 40A, s.5, and any amendments thereto.

### **1.6 SEPARABILITY**

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provision herein.

## **1.7 DEFINITIONS**

For the purpose of this Bylaw, the following words shall have the meanings given hereinafter: Where appropriate, the singular shall include the plural and the plural the singular; the words “used” or “occupied” include the words “designed”, “arranged”, “intended”, or “offered”, to be used or occupied; the words “building”, “structure”, “lot”, “land” or “premises” shall be construed as though followed by the words “or any portion thereof”; and the word “shall” is always mandatory and not merely directory. Terms and words not defined herein but defined in the Subdivision Control Law shall have the meanings given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in Merriam-Webster’s Unabridged Dictionary.

**Accessory Building** - A building customarily incidental to a principal building on the same lot or on an adjoining lot under the same ownership, and not attached to the principal building by any covered or roofed structure.

**Accessory Use** - The use of a building or premises which is customarily incidental to a principal permitted use.

**Agricultural use, exempt** - Agriculture, horticulture, silviculture, aquaculture, or viticulture exempted by M.G.L. c. 40A, s. 3.

**Agricultural use, nonexempt** - Agricultural use of property not exempted by M.G.L. c. 40A, s. 3.

**Alteration** - A change in or addition to a building or structure.

**Animal Unit** - An animal unit shall be defined as 1 horse, 1 pony, 1 cow, 1 steer, 7 sheep or 7 goats.

**Aquifer** - Geologic formation composed of rock or sand and gravel that contains significant amounts of potentially recoverable potable water and as defined by DEP Standards.

**Automobile repair shop** - Premises for the servicing and repair of autos, with or without fuel sales.

**Automobile service station** - Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

**Automobile or motorcycle sales** - Facility for the sale of motor vehicles or motorcycles.

**Building** - A combination of any materials forming a roofed enclosure intended for the shelter of persons, animals, or property, including any part of a building and porches and accessory buildings attached thereto and not to include trailers or mobile homes.

**Building Coverage** - The percentage which the aggregate area of all buildings on the lot bears to the area of the lot.

**Building Height** - The vertical distance from the average finished grade within 10 feet of the walls of the building to the highest point of the top story in the case of a flat or mansard roofs, including the top of a parapet, or to the mean level between the plate and the ridge for gable, hip, or gambrel roofs.

**Building Inspector** - The Board of Selectmen or their duly authorized agent.

**Building Setback Line** - A line parallel to the street at a distance equal to the required front yard or at a greater distance when otherwise legally established by the Town or by private covenant.

**Camping Unit** - Tent, collapsible tent trailer, motor home, pick-up camper, truck cap, and travel trailers of twenty-four (24) feet or less.

**Child Care Facility** - A day care center or school age child care program, as those terms are defined in M.G.L. c. 28A, s. 9.

**Club** - A bona-fide membership organization established under provisions of the General Law.

**Club, Private membership, not conducted as gainful business** - Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

**Commercial recreational campground for transient guests** - An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, and major recreational equipment, which is primarily used for recreational purposes and retains on open air or natural character.

**Congregate Elderly and Handicapped Housing** - A building or buildings arranged or used for the residence of persons age fifty-five (55) or older, or for handicapped persons, as defined in Chapter 121B of the Mass. General Laws, with some shared facilities and services.

**Day Care Center** - Any facility operated on a regular basis whether known as a day nursery, nursery school, child play school, or known under any other name which receives 7 or more children during the course of any one day.

**Driveway** - That portion of a parcel of land on private property designated by the property owner as the vehicle access from a street to parking or garage areas on private property. A driveway shall have a maximum grade of 12% for a distance of twenty-five (25) feet from the street line and shall be no closer than ten (10) feet from any abutting side property line. The driveway access shall occur across the minimum frontage required in the Zoning District in which the frontage is located.

**Dwelling** - A building occupied as a residence.

**Dwelling Conversion** - The conversion of a one-family dwelling existing at the time of enactment of the Bylaw into not more than a four (4)-family dwelling unit.

**Dwelling, Multi-Family** - A building containing at least three but not more than eight dwelling units with separate sleeping, cooking and sanitary facilities.

**Dwelling Unit** - One or more rooms providing complete sleeping, facilities for living, cooking, and bathing, for the exclusive use of the occupants of the dwelling unit.

**Educational use, exempt** - Educational facilities exempted from regulation by M.G.L. c. 40A, s. 3.

**Educational use, nonexempt** - Educational facilities not exempted from regulation by M.G.L. c. 40A, s. 3.

**Family** - Any number of individuals related by blood, marriage, or adoption, living together as a single housekeeping unit, provided that a group of not more than seven persons keeping house together, but not necessarily related by blood or marriage, may be considered a family.

**Family day care home** - Any private residence operating a facility as defined in G.L. c. 28A, s. 9.

**Farm Business** - Business established for the processing, display or sale of farm products, fifty percent (50) of which must have been raised or produced on the premises or elsewhere in the Town of Monson.

**Fast Food Establishment** - An establishment whose primary business is the sale of food for consumption on or off the premises which is: a) primarily intended for consumption rather than for use as an ingredient or component of meals; b) available upon a short waiting time; and c) packaged or presented in such a manner that it can be readily eaten outside the premises where it is sold.

**Fence** - A man made barrier intended to prevent escape or intrusion or to mark a boundary.

**Frontage** - The linear distance of a lot measured along the street right-of-way from the intersection of one side-lot line to the intersection of the other side of the same lot provided that

the minimum frontage required by this Bylaw shall be satisfied by a continuous, uninterrupted segment of such frontage. Lot frontage for each lot shall be on a public way.

**Funeral establishment** - Facility for the conducting of funerals and related activities such as embalming.

**Garage, Private** - A building or part thereof used for the storage of motor vehicles and accessory to a principal building on the same lot.

**General service establishment** - A facility providing general services such as cleaning and laundry service, radio and electrical repair shop, but excluding motor vehicle repair or service.

**Groundwater** - All the water found beneath the surface of the ground.

**Habitable Area** - The floor area of the living space for the exclusive use of a single family in a dwelling or in a dwelling unit. Living space shall not include porches, breezeways, garage, basement, and any unfinished or community areas, and shall be measured as net area, or as gross area less twelve percent (12%) for partitions and walls. Any area with less than six and one-half feet 6 1/2 ft.) clear head room shall not be considered habitable.

**Hazardous Waste** - A waste, which is hazardous to human health or the environment. Hazardous wastes have been designated by the U.S. Environmental Protection Agency under 40 CFR 250 and the Regulations of the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws Chapter 21C.

**Home Occupations** - A use, which is customarily and may properly be carried on for compensation entirely within a dwelling or accessory building.

**Horticulture** - The growing and harvesting of fruits, vegetables, grains, berries, nuts and other plant fit for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs.

**Impervious Surfaces** - Materials or structures on or above the ground that do not allow precipitation to infiltrate the underlying soil.

**Leachable Wastes** - Waste materials capable of releasing waterborne contaminants to the environment.

**Livestock** - shall mean domestic animals, including horses, ponies, cows, sheep and goats.

**Lot** - A single area of land in one ownership defined by meets and bounds or boundary lines on a deed recorded in the Registry of Deeds, Hampden County, or drawn on a plan approved under the Subdivision Control Law, or on a plan endorsed by the Planning Board stating "Approval not required under the Subdivision Control Law", or words of similar import.



**Lot Coverage** - The portion of a lot which is rendered impervious to rainfall, including but not limited to structures, pavement and permanent accessories.

**Lot, Buildable** - A land area meeting the specifications of the Bylaw and other lawful restrictions exclusive of the area of water courses, water bodies, wetland and land unsuited to common human activities. A buildable lot does not include land regulated by 310 CMR 10.

**Lot, Corner** - A lot bounded on two (2) or more sides by streets in any corner lot, the street line setback must be maintained from all street lines forming boundaries of a lot.

**Lot, Through** - A lot other than a corner lot which extends all the way between and abuts two or more generally parallel streets.

**Lot Line** - The established division line between lots or between a lot and a street.

**Lot Line, Front** - The property line dividing a lot from a street (right-of-way). On a corner lot the owner shall designate one street line as the front lot line.

**Lot Line, Side** - The line or lines bounding a lot which extend from the street toward the rear in a direction approximately perpendicular to the street. In the case of corner lots, or through lots, all lines extending from streets shall be considered side lot lines.

**Lot Line, Rear** - The lot line opposite the front lot line.

**Manufactured (or Modular) Housing** - A pre-fabricated structure made up of parts of standardized size that are arranged or fitted together to form a dwelling unit. The unit is usually transported by truck from a factory to a site built and placed on a foundation. A modular unit is not a mobile home and does not fall under the mobile home requirements of this Bylaw.

**Manufacturing:** -A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products.

**Medical or dental center or laboratory:** -A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

**Monopole** - The type of structure upon which antennas and other wireless communications devices are mounted that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top.

**Motel-Motor Hotel** - A building designed and used for lodging transients in non-housekeeping units with not less than twelve units in any one building. One permanent housekeeping dwelling unit is permitted for occupancy of a manager or custodian. Rooms for assembly, a swimming pool for the use of guests, and the serving of food shall be deemed to be accessory uses.

**Municipal facilities** - Facilities owned or operated by the Town of Monson.

**Non-Conforming Building** - A building legally existing at the effective date hereof, but which does not conform to all of the applicable requirements of this Bylaw regarding area and width of lot, frontage of lot, percentage of building coverage, required yards and parking facilities and building height limits.

**Non-Conforming Use** - A use of land, building, or premises which is not a use permitted by the provisions of this Bylaw for the district in which such land, building, or premises are situated, but which was legally existing at the effective date hereof.

**Office building** - A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise.

**Open Space** - The space on a lot unoccupied by buildings or structures, unobstructed to the sky by man-made objects other than walks, swimming pools, and terraced areas not devoted to streets, driveways, off-street parking or loading spaces and expressed as a percentage of total lot area.

**Outdoor Advertising Board** - The Outdoor Advertising Board of the Commonwealth of Massachusetts or any board or official which may hereafter succeed to its powers or functions.

**Parking Area** - Any open space used for parking motor vehicles exclusively, and in which no gasoline nor motor vehicle accessories are sold, or no other business conducted.

**Person** - Shall include an individual, corporation, society, association, partnership, trust or other entity, public or private.

**Personal service establishment** - A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio or shop, and the like.

**Premises** - The portion of a lot or building actually in use for the specific purpose or under consideration.

**Primary Aquifer Recharge Area** - Areas which are underlain by surficial geologic deposits including glaciofluvial or lacustrine stratified drift deposits or alluvium or swamp deposits, and in which the prevailing direction of groundwater flow is toward public water supply wells or potential sites for such wells and as defined by DEP Standards.

**Private Stable** - A building or part of a building in which one or more horses or ponies are kept for the private use of the owner, and in which no horses or ponies are kept for sale, rent, hire, breeding, or for commercial cartage, trucking or other business purposes.

**Radioactive Waste** - Any waste material or substance which is a source of ionizing or non-ionizing radiation.

**Rest home, convalescent or nursing home** - Any building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

**Restaurant or tavern** - A building, or portion thereof, containing tables and/or booths for at least two-thirds (2/3) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food establishments."

**Retail** - A facility selling goods to the public but not specifically listed in the Schedule of Use Regulations.

**Setback** - The distance required from a street line to the nearest wall of a building.

**Sign** - Any object constructed of any material that is intended or designed to advertise or call the attention of the public to the premises to a product made, displayed, or sold, and to services rendered thereon, or to identify the building or the occupants thereof, or any privately owned permanent or temporary device, billboard, placard, painting, drawing, poster letter, word, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of, an advertisement, announcement, or direction which is on a public way or on private property within public view of a public way, public park or reservation.

**Sign, Accessory** - Any sign that advertises, or indicates the person occupying the premises on which the sign is erected or maintained, or the business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter.

**Sign, Area of** – a. The area of a sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any “cutouts” or extensions, but shall not include any supporting structure or bracing; b. The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window, shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters and symbols; c. The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross-section of that object; d. In computing the area of signs, both sides of V-shaped signs, but only one side of back-to-back signs, shall be included.

**Sign, Non-Accessory** - Any sign not an accessory sign.

**Sign, Temporary** - Any sign, including its supporting structure, intended to be maintained for a continuous period of not more than one-hundred (100) days in any calendar year. A temporary sign shall incorporate such uses as political events and elections, tag sales and other special events.

**Sign, Standing** - Any accessory sign that is not attached to a building.

**Street** - A “street” is (a) a public way currently funded for maintenance and used as a public way

and which is certified by the Town Clerk as being accepted by Town vote and not subsequently abandoned by Town vote, or (b); a public way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (c); a public way in existence when the subdivision control law became effective as shown on the “official street map”. Privately owned ways, abandoned ways, and proposed ways as shown on the “official street map” at the time of its adoption are not “streets” in conformance with this definition.

**Street Line** - The dividing line between a street and a lot, and in the case of a public street, the Street line established by public authority. If street lines have not been so established, they shall be deemed to exist twenty-five (25) feet on each side of the center line of the street.

**Structure of Accessory Structure** - A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall for a structure, tent, reviewing stand, platform, bin, flagpole, mast for radio antenna or the like. The word “structure” shall be construed, where the context allows, as though followed by the words “or part or parts thereof”.

**Subdivision** - Including resubdivision, shall be as defined in the Subdivision Control Law.

**Swimming Pool** - A body of water eighteen (18) or more inches in depth below grade at any point in an artificial or semi-artificial receptacle or container, permanent or temporary, whether located indoors or outdoors, used or intended to be used for public, semi-public, or private swimming by adults or children or both, whether or not any charge or fee is imposed for such use, and includes all structures, appurtenances, equipment, appliances, and all other facilities appurtenant to or intended for the operation and maintenance of a swimming pool, and also all pools operated and maintained in conjunction with or by clubs, community association, and motels.

**Swimming Pool, Family** - A swimming pool used or intended to be used only by the owner or lessee thereof and his family and by his friends invited or permitted to use it without payment of any fee.

**Swimming Pool, Semi-Public** - A swimming pool to be used by a non-profit organization of not more than two-hundred (200) persons living in the immediate vicinity of the pool.

a. A semi-public pool shall be operated under a set of Bylaws which include safety rules, limited guest privileges, as well as regulations to keep the use of said pool from becoming objectionable to the abutter and neighbors, or a general nuisance.

b. Sufficient provision shall be made on the property in which the pool is located for off-street parking for all members or their guests.

**Trailer** - Any vehicle, or object on wheels and having no motive power of its own but which is drawn by or used in connection with a motor vehicle and which is so designed and constructed, or reconstructed, or added to by means of such accessories as to permit the use and occupancy thereof for human habitation, whether resting on wheels, jacks, or other foundations and shall include a type of vehicle commonly known as mobile home, which shall be defined to mean a

dwelling unit built on a chassis and containing electrical, plumbing, and sanitary facilities and designed to be able to be installed on a temporary or permanent foundation.

**Travel or Camping Trailer** - A vehicle similar to a trailer or mobile home, but not exceeding thirty (30) feet in length and designed primarily for recreational purposes. The term “travel or camping trailer” shall also be applied to any motor vehicle whose body has been equipped for occupancy similar to that of a travel trailer or camping trailer.

**Use** - The purpose for which a structure or lot is arranged, designed or intended to be used, occupied or maintained.

**Veterinary establishment** - A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short term care incidental to the clinic or hospital use.

**Watershed Area** - Lands lying adjacent to water courses or bodies which create the catchment of drainage areas of such water bodies or courses.

**Wireless Communications Facilities** - The structures and devices designed to facilitate cellular and telephone services, personal communications services and enhanced specialized mobile radio service as defined in Section 704 of the Federal telecommunications Act of 1996. Included are towers, antennae mounted to towers or other structures, and accessory structures, such as sheds, which are directly required for facility operations. Not included in this definition are antennae and dishes used solely for residential television and radio reception; and amateur radio facilities used in accordance with the terms of any amateur radio service license issued by the Federal Communication Commission provided the tower is not used for commerce.

**Yard** - A required open space, unoccupied except as herein permitted, between a principal building and a street or a lot line.

**Yard, Front** - A yard extending between lot side lines across the front of a lot adjacent to each street the lot adjoins.

**Yard, Rear** - A yard adjacent to the rear lot line and extending between side lot lines.

**Yard, Side** - A yard adjacent to the side lot line extending from the front yard to the rear yard.

**Zoning Permit** - A zoning permit is issued by the Zoning Enforcement Officer.

## **SECTION 2.0 ZONING DISTRICTS**

### **2.1 TYPES OF DISTRICTS**

For the purpose of this Bylaw, the Town of Monson is hereby divided into the following types of use districts:

Residence Districts:

RV - Residential Village

RR - Rural Residential

Commercial Districts:

CC - Central Commercial District

GC - General Commercial

CR - Commercial Recreation District

Reserved Land District: RL

Scenic District: SD

Industrial District: I

Water Supply Protection District: WSP

Flood Plain District: FPD

### **2.2 DISTRICT LOCATIONS AND BOUNDARIES**

**2.2.1 Map.** The zone districts described herein are shown on a map titled Zoning map - Town of Monson, Massachusetts, dated November 30, 1970, which map is hereby declared to be made a part of the Zoning Bylaws of Monson, Massachusetts.

**2.2.2 Boundaries.** The following rules will be used to interpret the Zoning Map.

1. Where boundaries are indicated in the right of way streets or watercourses, such boundaries shall be the centerline of the right of way.
2. Where boundaries approximately follow property lines and are not more than twenty-five feet (25 ft.) therefrom, the property line shall be the district boundary, with the exception of the Water Supply Protection District and the Floodplain District wherein boundaries shall always follow natural features and landscape contours shown on the maps.
3. Where boundaries are parallel to a street or road and fixed by dimensions on the zoning map, the distance shall be measured from the center line of such ways.

4. Where boundaries include the land lying under any water body or stream therein and opposite sides of the stream are in different zone districts, the zone boundary shall be considered the centerline of the stream.

5. Where distances are not specified on the zoning map nor otherwise determined from the above provisions, the scale of the zoning map shall be used to determine the location of the district boundary.

6. Where the location of a boundary line is uncertain, the Building Inspector shall determine its position in accordance with the distance in feet from other lines as given or as measured from the scale of the map.

**2.2.3 Lot in More Than One District.** In the case of a lot lying in more than one zone district, the provision of the less restrictive district may be applied for a distance of not more than twenty-five (25) feet into the more restrictive district, provided the lot has frontage on a street in the less restrictive district.

## **2.3 RESERVED LAND DISTRICT**

**2.3.1 Purpose.** The purpose of the R.L. Zone District is to conserve lands in generally public or semi-public ownership, and to limit the location and use of land and buildings under private ownership for trade, industry, agriculture, and residential purposes, but this section shall in no way limit nor prohibit the use of land or buildings for any church or other religious purpose, or for any educational purpose, as provided in Section 2 of Chapter 40A of the General Laws of Massachusetts.

**2.3.2 Permitted Uses.** Any use which is permitted in the charter of the owner, provided that any industrial, business, and/or residential uses shall be limited to, and used exclusively by and for the requirements of the owner.

**2.3.3 Prohibited Uses.** Any industrial, business and/or residential use under private ownership that does not furnish a public service or utility, unless and until:

1. A plan of development showing the proposed changes in use and their relation to that section of the Town, shall have been prepared.
2. The Planning Board shall have made a complete study of the proposal from a physical, social, economic view, as well as its effect on the Town's furnishing services and facilities.
3. The Planning Board shall have prepared a written report on its findings, and the changes required in the Zoning Bylaw which shall become a part of the record of a public hearing held by the Planning Board; and,

4. the amendments to the Zoning Bylaw shall have been adopted by a town meeting as provided by law.

## **2.4 COMMERCIAL DISTRICTS**

In any Commercial District, no building nor structure or part thereof shall be erected, altered, or used, nor may any premises be used except in conformance with the principal use regulations. The off-street parking and loading requirements of Section 5.4 hereafter shall apply to all new uses in Commercial Districts, and shall also apply to any building or use that is expanded by more than 20% in area after the effective date of this Bylaw.

## **2.5 INDUSTRIAL DISTRICT**

**2.5.1 Fire Protection.** Where an industrial use is located beyond the service area of public water supply, adequate provision for fire protection in the judgment of the Fire Chief of Monson shall be made.

**2.5.2 Flammables.** The storage of flammable or explosive materials shall be in the manner approved by the Fire Chief of Monson who may require any precautionary measures necessary in his judgment to eliminate serious exposure hazard to life and property.

**2.5.3 Parking.** Off-street parking and truck unloading shall conform to the requirements of Section 5.4 of the Zoning Bylaws.

**2.5.4 Buffer.** Landscaped buffer strips shall be required between residential districts and industrial districts, and shall conform to the requirements of Section 5.1.10 of the Zoning Bylaws.

## **SECTION 3.0 USE AND DIMENSIONAL REGULATIONS**

### **3.1 SCHEDULE OF USE REGULATIONS**

Except as provided elsewhere in this Bylaw, no building or structure shall be erected or altered, and no building, structure or land shall be used for any purpose other than as provided for in this section. The restrictions and controls intended to regulate development in each district are set forth in Table 1, Monson Schedule of Use Regulations. The following notations apply to the Schedule of Use Regulations:

Y-Yes	Use Permitted
SP-PB-SPA	Use allowed by Special Permit from Planning Board with Site Plan Approval
SPA	Use allowed with Site Plan Approval
SP-ZBA-SPA	Use allowed by Special Permit from Zoning Board of Appeals with Site Plan Approval



SP-ZBA                                      Use allowed by Special Permit from Zoning Board of Appeals

N-No                                        Use Prohibited

Uses permitted and uses allowed by special permit or by site plan approval shall be in conformity with all density and dimensional regulations and any other pertinent requirements of this Bylaw.

**3.2    PROHIBITED USES.** Any use not specifically or generally listed herein or otherwise permitted in a district shall be deemed as prohibited. The following uses shall be prohibited in all districts:

**3.2.1**   Trailer camps or parks providing locations and service facilities for house trailers except as provided for in Section 3.1. An individual trailer may be located on a lot provided it is not used as living quarters while so located.

**3.2.2**   Junk yard, dump and auto graveyard.

**3.2.3**   Billboards.

**Town of Monson Schedule of Use Regulations (Table 1)**

Land Use Classification	Standards & Conditions	Zoning				District				
		RV	RR	CC	GC	CR	I	RL	WSP	FPD
General Uses										
Exempt Agriculture, horticulture, floriculture, viticulture & farm business	Parcel larger than 5 acres. 50% of products sold must be raised on the premises. Temporary stands for the sale of products are promoted up to six months per year.	Y	Y	Y	Y	Y	Y	Y	Y	Y
Commercial Greenhouse	Non-exempt only.	SP/ZBA	SP/ZBA	Y	Y	N	N	N	Y	Y
Commercial, livestock, dairy, poultry farm	Non-exempt only. Subject to restrictions in note "g"	Y	Y	N	Y	N	N	N	Y	Y
Wood harvesting, tree farm, nursery	Non-exempt only.	SP/ZBA	SP/ZBA	Y	Y	Y	N	Y	Y	Y
Conservation land		Y	Y	Y	Y	Y	Y	Y	Y	Y
Commercial boarding stable, riding academy	Non-exempt only.	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	N	N	SP/ZBA	N
Commercial golf course		N	SP/ZBA	N	N	SP/ZBA	N	N	N	SP/ZBA
Commercial landing strip or heliport		N	SP/ZBA	N	SP/ZBA	N	Y	N	N	SP/ZBA
Commercial recreational camping for transient guests	Subject to restrictions in Section 6.11.	N	N	N	N	SP/ZBA SPA	N	N	N	N
Commercial fishing or ski grounds		SP/ZBA	SP/ZBA	N	Y	Y	N	N	SP/ZBA	SP/ZBA
Residential Uses										
Single family detached dwelling		Y	Y	N	N	N	N	N	Y	N

Land Use Classification	Standards & Conditions									
				Zoning	District					
		RV	RR	CC	GC	CR	I	RL	WSP	FPD
Dwelling conversions	The ZBA may issue a special permit for a one-family dwelling to accommodate up to four (4) families. See note "h"	SP/ZBA	N	N	N	N	N	N	SP/ZBA	N
Multi-family dwelling	Subject to restrictions in Section 6.2.	SP/ZBA	SP/ZBA	N	N	N	N	N	N	N
Accessory apartment	Subject to restrictions in Section 6.7.	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	N	N	SP/ZBA	Y	N
Estate lots	Subject to restrictions in Section 6.5.	N	SP/PB	N	N	N	N	N	N	N
Trailer	Subject to restrictions in Section 6.10.	Y	Y	N	N	N	N	N	N	N
Room rental	Taking of boarders and/or roomers not to exceed four persons by a resident family. Subject to signage regulations.	SP/ZBA	Y	Y	Y	N	N	N	Y	N
Congregate housing for the elderly or handicapped	Subject to restrictions set forth in Sections 6.3 -- Special Use Regulations for Congregate Housing.	SP/ZBA	SP/ZBA	N	N	N	N	N	Y	N
Open space community	Subject to restrictions set forth in Sections 6.4 -- Special Use Regulations for Open Space Communities.	N	SP/SPA PB	N	N	N	N	N	SP/SPA PB	N
Dwellings in the commercial recreational district	Residential uses permitted only where accessory to a permitted use such as a single-family dwelling for persons employed on the premises.	N	N	N	N	Y	N	N	N	N
Dwellings & housekeeping facilities for employees and non-paying guests of owner or lessee in accessory building		SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	N

**Government & Public Service  
Uses**

Land Use Classification	Standards & Conditions									
				Zoning	District					
		RV	RR	CC	GC	CR	I	RL	WSP	FPD
Government administration building		N	N	Y	Y	N	N	N	Y	N
Public utility administration building	Subject to restrictions in District( RV); see note "i" and in (CC), see note "j".	SP/ZBA	N	Y	Y	N	N	N	Y	N
Fire or police station		Y	Y	Y	Y	N	N	N	Y	N
Municipal dog pound		SP/ZBA	SP/ZBA	Y	Y	N	N	N	N	N
		Y	N	Y	Y	N	N	N	N	N
Municipal highway department accessory uses										
Civil defense facility		SP/ZBA	N	SP/ZBA	N	N	N	N	N	N
Community center, facility for the elderly		Y	N	Y	N	N	N	N	Y	N
Childcare facility		SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	N	N	N
Childcare facility - exempt		Y	Y	Y	Y	Y	Y	Y	Y	Y
<b>Institutional Uses</b>										
Exempt educational uses		Y	Y	Y	Y	Y	Y	Y	Y	Y
Exempt Religious Uses		Y	Y	Y	Y	Y	Y	Y	Y	Y
Public library, museum		Y	Y	SP/ZBA	SP/ZBA	Y	Y	Y	Y	N
Public park, playground or recreation area		Y	Y	SP/ZBA	SP/ZBA	Y	Y	N	Y	Y
Non-exempt educational use		SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	N	N	N	N	N

Land Use Classification	Standards & Conditions	Zoning			District					
		RV	RR	CC	GC	CR	I	RL	WSP	FPD
Neighborhood or community clubhouse, headquarters of fraternal organization	Shall serve primarily the residents of Monson.	SP/ZBA	N	Y	Y	N	N	N	Y	N
Private membership club, not conducted as gainful business		SP/ZBA	SP/ZBA	Y	Y	Y	N	SP/ZBA	Y	N
Hospital, sanitarium		SP/ZBA	SP/ZBA	N	N	N	N	N	N	N
Rest home, convalescent or nursing home		SP/ZBA	SP/ZBA	N	N	N	N	N	N	N
Cemetery, crematory	Crematory use shall be restricted to the cemetery within which it is located.	Y	Y	Y	Y	Y	N	N	Y	N
Private museum, art gallery, craft center		SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	N	N	N	SP/ZBA	N
<b>Business Uses</b>		N	N	Y	Y	SP/ZBA	SP/ZBA	N	Y	N
Retail Store		N	N	Y	Y	N	SP/ZBA	N	Y	N
Bank, loan agency		N	N	Y	Y	N	Y	N	Y	N
Office building		N	N	Y	Y	N	Y	N	Y	N
Services	Businesses and personal services shops.	N	N	Y	Y	N	SP/ZBA	N	Y	N
Restaurant, tavern	For serving food or beverage to persons inside the building. Catering and take out as accessory use only.	N	N	Y	Y	N	SP/ZBA	N	Y	N
Fast food establishment		N	N	N	N	N	N	N	N	N
Telephone exchange		N	N	Y	Y	N	Y	N	Y	N

Land Use Classification	Standards & Conditions									
		<b>RV</b>	<b>RR</b>	<b>Zoning CC</b>	<b>District GC</b>	<b>CR</b>	<b>I</b>	<b>RL</b>	<b>WSP</b>	<b>FPD</b>
Auto service station, auto repair shop	Provided that all repair work shall be conducted in an enclosed building and no unregistered vehicles incapable of operation shall be stored in the open. Subject to restrictions in note "k".	N	N	SP/ZBA	SP/ZBA	N	N	N	N	N
Auto sales, motorcycle sales	Used car sales only where incidental to new car sales.	N	N	Y	Y	N	N	N	Y	N
Radio and electrical repairs shop		N	N	Y	Y	N	SP/ZBA	N	Y	N
Funeral establishment		N	N	Y	Y	N	N	N	Y	N
Bowling alley		N	N	Y	Y	SP/ZBA	N	N	Y	N
Theater, except drive-in theater		N	N	Y	Y	SP/ZBA	N	N	Y	N
Printer		N	N	Y	Y	N	SP/ZBA	N	SP/ZBA	N
Medical or dental center or laboratory		N	N	Y	Y	N	N	N	Y	N
Veterinary establishment, place for boarding animals or raising pets for gainful purpose	Parcel must be 2 acres or more in size.	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	N	N	N	N	N
Motel, motor hotel	Provided the lot area is not less than 2,000-sq. ft. for each rental unit.	N	N	Y	Y	N	N	N	P/ZBA	N
Wholesale trade and storage warehouses, cold storage locker plant	Provided there is no manufacturing nor processing of materials.	N	N	Y	Y	N	Y	N	Y	N
Cleaning and laundry service	Laundromat and dry cleaners must comply with Water Supply Protection By-Law.	N	N	Y	Y	N	N	N	Y	N

Land Use Classification	Standards & Conditions									
		<b>RV</b>	<b>RR</b>	<b>Zoning CC</b>	<b>District GC</b>	<b>CR</b>	<b>I</b>	<b>RL</b>	<b>WSP</b>	<b>FPD</b>
Mixed residential/business uses	See Section 6.13.	N	N	SP/SPA ZBA	SP/SPA ZBA	N	N	N	N	N
<b>Industrial Uses</b>										
Manufacturing, processing, fabrication, assembly & storage of materials, mechanical products or equipment	No use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of fire or explosion. Scrapping and salvage of motor vehicles and parts is not permitted. No operations involving the rendering of fats, oils or viscera are permitted.	N	N	N	N	N	SP/SPA ZBA	N	SP/ZBA	N
Whole business and distributing plant	The assembly of electrical appliances, instruments, products and devices, including the manufacture of parts. Foundries for non-ferrous metals and the manufacture and storage of chemicals and plastics.	N	N	N	N	N	Y	N	Y	N
Printing, publishing, packaging, data processing and allied uses	No use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of fire or explosion.	N	N	SP/ZBA	SP/ZBA	N	Y	N	Y	N

Land Use Classification	Standards & Conditions									
		RV	RR	Zoning CC	District GC	CR	I	RL	WSP	FPD
Research or development laboratory	No use shall be permitted which would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of fire or explosion. No research or testing to be conducted outdoors unless expressly permitted by Special Permit. Wholesale or retail sale of products is prohibited.	N	N	N	N	N	Y	N	Y	N
Lumber yard & similar bulk storage of materials outside a structure		N	N	N	SP/ZBA	N	Y	N	Y	N
<b>Accessory Uses</b>										
Home occupation	The use of a portion of a dwelling or accessory building which is incidental and subordinate to the residential use and is for gainful employment by the resident. Home occupations shall include, but are not limited to the following: doctor, dentist, lawyer, engineer, artist, teacher of academic subjects, accountant, family day care worker, real estate or insurance agent, travel agent, secretarial service, tailor, dancing or music teacher, craft instructor, photographer, barber, beauty parlor operator, as well as the use of a portion of a dwelling or accessory building as a place for incidental work and storage in connection with his off-premises trade by a resident builder, carpenter, electrician, painter, plumber, or other artisan, or by a resident tree surgeon, landscape gardener, or similar person, provided that: a. Such use is clearly secondary to the use of the premises for dwelling purposes, of which the occupant must be the owner of the dwelling. b. Not more than two persons, other than the	Y	Y	Y	Y	N	N	N	Y	N



residents of the premises, are regularly employed therein in connection with such use.  
c. No trading in merchandise is regularly conducted except for products made on the premises or of parts or other items customarily maintained in connection with and incidental to such merchandise.  
d. No external change in made which alters the residential appearance of the building.  
e. All operations, including incidental storage, are carried on within the principal or accessory buildings, and that there is no outward evidence that the premises are being used for any purpose other than residential, except for an accessory sign.

Land Use Classification	Standards & Conditions			Zoning	District					
		RV	RR	CC	GC	CR	I	RL	WSP	FPD
Private garage or stables		Y	Y	Y	Y	N	Y	N	SP/ZBA	SP/ZBA
Family Day Care, Large		SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	SP/ZBA	Y	SP/ZBA	SP/ZBA
Family Day Care, Home		Y	Y	Y	Y	Y	Y	Y	Y	Y
Sign	Subject to Sign By-Law in Section 5.3 requiring a permit from the Zoning Enforcement Officer.	Y	Y	Y	Y	Y	Y	Y	Y	Y
Swimming pool	Subject to Swimming Pool By-Law in Section 6.9.	Y	Y	SP/ZBA	SP/ZBA	Y	N	Y	Y	N
Private raising/keeping of livestock - not a farm	Parcel must be not less than 1 1/2 acres of land for first grazing animal and 1/2 acre for each additional animal. No accessory building for the housing of animals is allowed within 75 feet of any lot line.	Y	Y	N	N	Y	N	Y	Y	N

Land Use Classification	Standards & Conditions			Zoning	District					
		RV	RR	CC	GC	CR	I	RL	WSP	FPD
Unregistered vehicles	Any vehicle not registered shall be stored in a building or in a location that is not visible from a street or way, not to include farm machinery.	Y	Y	Y	Y	Y	Y	Y	Y	Y

**Town of Monson Dimensional and Density Regulations (Table 2)**

District	Use	Minimum Lot Area (sq. ft. or as noted)	Minimum Frontage (ft.)	Minimum Front Yard (ft.)	Minimum Side Yard (ft.)	Minimum Rear Yard (ft.)	Maximum Height (ft.)	Maximum No. of Stories	Maximum Bldg. Coverage (%)	Minimum Open Space (%)	Other
RV	Any permitted use	20,000	125	40	15	40	40	3	25		
	Multi-family	31,000	125	40	40	40	40	3	25	30	15 foot landscaped buffer is required along side and rear lots abutting property not already containing a buffer strip along said lot line. Maximum number of dwelling units per structure: 4.
	Congregate housing for elderly or handicapped	31,000 plus 2,000 per bedroom	125	40	40	40	40	3	25	30	Maximum number of dwelling units per structure: 6
RR	Any permitted use	60,000	200	50	20	50	40	3	15		
	Congregate housing for elderly or handicapped	Per dwelling unit: 44,000	For 3 dwelling units: 300	75	75	50	40	3	20	40	Maximum number of dwelling units per structure: 4
	Open space community	10 acres	500 (landscaped buffer along a way)								500-foot buffer off existing way
		Per dwelling unit: 30,000	125	40	20	40	40	3	15		New building lot on newly created way

**Town of Monson Dimensional and Density Regulations (Table 2)**

District	Use	Minimum Lot Area (sq. ft. or as noted)	Minimum Frontage (ft.)	Minimum Front Yard (ft.)	Minimum Side Yard (ft.)	Minimum Rear Yard (ft.)	Maximum Height (ft.)	Maximum No. of Stories	Maximum Bldg. Coverage (%)	Minimum Open Space (%)	Other
RR	Kennel	More than 3 but less than 10 dogs: 4 acres; ten or more dogs: 10 acres	200	500	500	500	15	1	10		75-foot landscaped buffer required along side and rear lots abutting property not already containing a buffer strip along same lot line
	Multi-family	10 acres	500	150	100	100	40	3	20	30	Maximum number of units per structure: 4
		Per dwelling unit: 20,000	200	50	20	50					75-foot landscaped buffer required along side and rear lots abutting property not already containing a buffer strip along same lot line.
	Estate lots	10 acres	40	50	20	50	40	3	25		
CC	Any permitted use	15,000	100	20 note "a"	10 notes "b" & "c"	20 note "b"	40	3	50		
	Motel or motor inn	15,000 plus 2,000 per rental unit	100	20 note "a"	50	75	40	3	50		
GC	Any permitted use	50,000	200	40 note "a"	12 note "b"	30 note "b"	40	3	40		
CR	Camping trailer campgrounds	25 acres	500	200	75 note "d"	75 note "d"	40	3	30	40	Maximum number of campsites per acre: 10

**Town of Monson Dimensional and Density Regulations (Table 2)**

District	Use	Minimum Lot Area (sq. ft. or as noted)	Minimum Frontage (ft.)	Minimum Front Yard (ft.)	Minimum Side Yard (ft.)	Minimum Rear Yard (ft.)	Maximum Height (ft.)	Maximum No. of Stories	Maximum Bldg. Coverage (%)	Minimum Open Space (%)	Other
I	Any permitted use	40,000	150	40	30	30	40 note "f"	3 note "f"	40		
FPD	Any permitted use	40,000	note "e"	40	30	20	40	3	25		
WSP	Any permitted use	note "e"	note "e"	note "e"	note "e"	note "e"	note "e"	note "e"	note "e"		

**Notes for Tables 1 & 2**

Note a	Front yards across the street from a residential district shall be landscaped with no parking in such yards.
Note b	Side and rear yards shall have a 20-foot wide buffer as described in Section 5.1.10 of existing Bylaw.
Note c	Where each owner of abutting lots in CC district agrees to build on a common lot line, no side yard shall be required, provided that no building or group of attached buildings constructed on separately owned lots shall result in combined rear yards, exceed 200 feet in total length between side yards giving vehicular access to a street or way.
Note d	Side yard shall have a 100-ft. wide buffer and the rear yard shall have 200-ft. wide buffer as described in Section 5.1.10 of existing Bylaw.
Note e	Within the overlay district, the dimensional regulations of the underlying district shall remain in effect.
Note f	For a maximum building height over 40 feet in the industrial district, a special permit from the Fire Chief must be obtained.
Note g	The raising and keeping of livestock for the private use of the owner is permitted as an accessory use on a parcel which is not agriculturally exempt, but which contains not less than one and one-half (1 1/2) acres of land for the first grazing animal unit and an additional one half (1/2) acre of land for each additional grazing animal unit providing no accessory building for the housing of animals is located within 75 feet of any lot line.
Note h	The Board shall place such reasonable restrictions and conditions upon the granted exception as they deem necessary under the purpose of the Zoning Bylaws.
Note i	Public Utility installations, provided there are no service or storage yards in connection therewith, as a special permit for an exception after approval of the Board of Appeals. The Board of Appeals may require such safeguards as will preserve the residential character of the neighborhood.
Note j	Public utility building or structure, including storage yard, where properly landscape buffered from any other use.
Note k	Automotive service stations, public garages, and repair garages, provided: <ul style="list-style-type: none"> <li>a. No part of such use shall be less than 100 feet from a residence district;</li> <li>b. No vehicular access from such premises to a street shall be less than 300 feet along a street to the nearest part of property used or held to used for a school, library, church, playground, park, recreation, social or community center, or a hospital or institution for the ill, handicapped or feeble;</li> <li>c. Vehicular accesses to such premises shall not be located where they will constitute a traffic hazard; such entrances and exits to street shall be approved by the Board of Selectmen as to location and construction with the intents and purposes of this Bylaw.</li> </ul>

### **3.3 NONCONFORMING USES AND STRUCTURES**

**3.3.1 Applicability.** This Zoning By-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by M.G.L. c. 40A, s. 5 at which this Zoning By-law, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

**3.3.2 Nonconforming Uses.** The Board of Appeals may issue a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

1. Change or extension of the use;
2. Change from a nonconforming use to another, less detrimental, nonconforming use.

**3.3.3 Nonconforming Structures.** The Board of Appeals may issue a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

1. Reconstructed, extended or structurally changed;
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner.

**3.3.4 Variance Required.** The reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, including the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals; provided, however, that this provision shall not apply to nonconforming single and two family residential structures, which shall be governed by Section 3.3.5, below.

**3.3.5 Nonconforming Single and Two Family Residential Structures - Alterations as of Right.** Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon the issuance of a building permit after a determination by the Building Commissioner that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

1. Alteration to a structure which is located on a lot with insufficient area, where such alteration complies with all current setback, yard, building coverage, and building height requirements.
2. Alteration to a structure which is located on a lot with insufficient frontage where such alteration complies with all current setback, yard, building coverage, and building height requirements.
3. Alteration to a structure which encroaches upon one or more required yard or setback areas, where such alteration complies with all current setback, yard, building coverage and building height requirements.
4. Alteration to a nonconforming structure which will not increase the footprint of the existing structure providing that existing height restrictions shall not be exceeded.
5. Alteration to the side or face of a structure which is nonconforming with regard to a required yard or setback area where such alteration will not encroach upon such area to a distance greater than the existing structure.

**3.3.6 Nonconforming Single and Two Family Residential Structures - Alterations by Special Permit.** In the event that the Building Commissioner, after applying Section 3.3.5, above, determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

**3.3.7 Abandonment or Non-Use.** A nonconforming use or structure, which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Zoning By-law.

**3.3.8 Reconstruction after Catastrophe or Demolition.** Any nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions:

1. Reconstruction of said premises shall commence within two years after such catastrophe or demolition.
2. The reconstructed building(s) shall be located on the footprint and within the cube of the original nonconforming structure, as defined by the preexisting footprint and height thereof.

**3.3.9 Reversion to Nonconformity.** No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

### **3.4 DIMENSIONAL REGULATIONS**

**3.4.1 Table of Dimensional Regulations.** All permitted uses and uses allowed by special permit shall be in conformity with the dimensional and density regulations set forth in Dimensional and Density Regulations (Table 2).

**3.4.2 Land for Cars and Parking.** The use of land for access to, or for parking in connection with a use shall be considered to be accessory to and a part of such use; this provision shall not prohibit access across a commercial district to an industrial district, but shall prohibit access to business or industrial uses across a residential district.

**3.4.3 Corner Visibility.** Corner Clearances: Between the lines of streets intersecting at an angle of less than one hundred thirty-five (135) degrees and a line joining points on such lines twenty-five (25) feet distant from that point of intersection, no building nor structure may be erected, and no vegetation may be maintained between a height of three (3) feet and a height of eight (8) feet, and above the plane through their average grades.

**3.4.4 Residential Coverage Requirements.** No building nor structure shall be built in any residence district except in conformance with the following requirements and land hereafter divided, subdivided, or sold shall make provision for conformance with these requirements. Eaves, chimneys, and other architectural features may project not more than 24 inches into the required yards and uncovered steps may project into the required yards.

**3.4.5 Location of Detached Accessory Buildings.** No detached accessory building shall be built in any required front or side yard nor within five feet of the rear lot line.

**3.4.6 Gas and Oil Pipe Lines.** No building used for human occupancy or human habitation shall be located less than 40 feet from the right-of-way of any high-pressure gas or liquid petroleum transmission pipeline. Any pressure of one hundred (100) P.S.I. or greater shall be considered to be high pressure.

### **SECTION 4.0 OVERLAY DISTRICT REGULATIONS**

#### **4.1 FLOODPLAIN DISTRICT**

**4.1.1 Purposes.** The purposes of the Floodplain District are:

1. To provide that lands in the Town of Monson subject to seasonal or periodic flooding described hereinafter shall not be used for residence or other purposes in such manner as to endanger the health or safety of the occupant thereof.
2. To protect, preserve and maintain the water table and water recharge areas within the Town so as to preserve present and potential water supplies for the public health and safety of the Town of Monson.
3. To assure the continuation of the natural flow pattern of the water course(s) within the



Town of Monson in order to provide adequate and safe floodwater storage capacity to protect persons and property against the hazards of flood inundation.

**4.1.2 Scope of Authority.** The Floodplain District is an overlay district and shall be superimposed on the other districts established by this Bylaw. All regulations of the Monson Zoning Bylaw applicable to such underlying districts shall remain in effect, except that where the Floodplain District imposes additional regulations, such regulations shall prevail.

**4.1.3 District Delineation.**

1. The Floodplain District is defined as all lands designated as Zone A or Zone A 1-30 on the Town of Monson Flood Insurance Rate Maps (FIRM) panels 250145-0008-9, 0015-0019, 0035 and 0040, of plans on file with the Town Clerk or as determined by a registered professional engineer and approved by the Floodplain Administrator.
2. The floodway boundaries are delineated on the Monson Flood Boundary and Floodway Map (FBFM) panel 250145-0001-0045 dated June 1981 and modified by subsequent changes or as determined by a registered professional engineer and approved by the Floodplain Administrator
3. The FIRM and FBFM maps are incorporated herein by reference and are on file with the Town Clerk.

**4.1.4 Permitted Uses.** In the Floodplain District no new building shall be erected or constructed, and no existing structure shall be altered, enlarged or moved; no dumping, filling or earth transfer or relocation shall be permitted; nor shall any land, building or structure be used for any purposes except:

1. Conservation of water plants and wildlife.
2. Outdoor recreation, including play areas, nature study, boating, fishing and hunting where otherwise legally permitted, but excluding buildings and structures.
3. Wildlife management areas, foot, bicycle, and/or horse paths and bridges, provided such uses do not affect the natural flow pattern on any watercourse.
4. Grazing and farming, including truck gardening and harvesting of crops.
5. Forestry and nurseries.
6. Dwellings lawfully existing prior to the enactment of this Bylaw.
7. Temporary, non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.

**4.1.5 Uses by Special Permit.** No structure or building shall be erected, constructed, substantially improved over 50 percent of assessed market value or otherwise created or moved; no earth or other materials dumped, filled, excavated, or transferred, unless a special permit is granted by the Zoning Board of Appeals. The applicant shall submit five (5) copies of the Special Permit Application to the Zoning Board of Appeals. In addition, the applicant shall also file one copy of the plan with the Conservation Commission.

Uses allowed by Special Permit from the Zoning Board of Appeals in accordance with Section 7.3 within the Floodplain District are described in Section 3.0 and shall be subject to the following additional restrictions:

1. The following requirements apply in the Flood Plain District:

(a) Within Zone A or Zones A1-30, where base flood elevation is not provided on the FIRM or FBFM, the applicant shall obtain any existing base flood elevation date. These data will be reviewed by the Building Inspector for their reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.

2. The following provisions apply in the Floodway designated on the FBFM:

(a) Within the Floodway designated on the FBFM, no encroachments (including fill, new construction, substantial improvements to existing structures, or other development) shall be allowed unless it is demonstrated by the applicant that the proposed development, as a result of compensating actions, will not result in any increase in flood levels during the occurrence of a 100 year flood in accordance with the Federal Emergency Management Agency's regulations for the National Flood Insurance Program.

(b) Any encroachment in the Floodway meeting the above standard must also comply with the floodplain requirements of the State Building Code.

**4.1.6 Additional Special Permit Criteria.** In addition to the Special Permit criteria specified in Section 7.3, the Zoning Board of Appeals may grant a Special Permit if it finds:

1. The proposed use will not create increased flood hazards, which shall be detrimental to the public health, safety and welfare; and,

2. The proposed use will comply in all respects to the provisions of the underlying District or Districts within which the land is located.

3. The proposed is in compliance with all applicable state and federal laws, including the Massachusetts Building Code and the Massachusetts Wetlands Protection Act (M.G.L. Chapter 131, Section 40).

**4.1.7 Prohibited Uses.** The following uses are specifically prohibited and may not be allowed by special permit:

1. Solid waste landfills, junkyards and dumps.
2. Business and industrial uses, not agricultural, which manufacture, use process, store or dispose of hazardous materials or wastes as a principal activity, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning and auto body repair.
3. The outdoor storage of salt, other de-icing chemicals, pesticides or herbicides shall be prohibited without suitable overhead protection from weather. All storage shall be within an impervious containment area.
4. Draining, dredging, excavation or disposal of soil or mineral substances, except as necessary for permitted uses or uses allowed by special permit, as specified in the Earth Removal Bylaw, Section 6.6.

## **4.2 WATER SUPPLY PROTECTION DISTRICT**

**4.2.1 Purpose of District.** The purpose of this Water Supply Protection District is to:

1. Promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Monson.
2. Preserve and protect existing and potential sources of drinking water supplies;
3. Conserve the natural resources of the town; and
4. Prevent temporary and permanent contamination of the environment.

**4.2.2 Scope of Authority.** The Water Supply Protection District is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities/ uses in a portion of one of the underlying zoning districts which fall within the Water Supply Protection District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Water Supply Protection District.

**4.2.3 Definitions.** For the purposes of this section, the following terms are defined below:

**Aquifer:** Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water of potentially recoverable water.

**Water Supply Protection District:** The zoning district defined to overlay other zoning districts in the Town of Monson. The Water Supply Protection District may include specifically designated recharge areas.

**Impervious Surface:** Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

**Mining:** The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores, or bedrock.

**Potential Drinking Water Sources:** Areas which could provide significant potable water in the future.

**Recharge Areas:** Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas may include areas designated as Zone I, Zone II, or Zone III.

**Toxic or Hazardous Material:** Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water in the Town of Monson. Toxic or hazardous materials include, without limitation; synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (M.G.L.) Chapter(c.) 21C and 21E and 310 CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use.

**4.2.4 Establishment and Delineation of Groundwater Protection District.** For the purposes of this district, there are hereby established within the town certain groundwater protection areas, consisting of aquifers or recharge areas which are delineated on a map. This map is at a scale of 1 inch to 12,000 feet and is entitled "Zone II Map, Bethany, Palmer & Bunyan Road Wells, Town of Monson," dated October 2001. This map is hereby made a part of the town zoning bylaw and is on file in the Office of the Town Clerk.

**4.2.5 District Boundary Disputes.** If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application to the Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation. The burden of proof shall be upon the owner(s) of the land to show where the bounds should be located. At the request of the owner(s), the town may engage a professional engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation.

**4.2.6 Use Regulations.** In the Water Supply Protection District the following regulations shall apply:

**A. Permitted Uses.** The following uses are permitted within the Water Supply Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal laws are also obtained:

1. Conservation of soil, water, plants, and wildlife;
2. Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;

3. Foot, bicycle and/or horse paths, and bridges;
4. Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
5. Maintenance, repair, and enlargement of any existing structure, subject to Section B (prohibited uses) and Section C (special permitted uses);
6. Residential development, subject to Section B (prohibited uses) and Section C (special permitted uses);
7. Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section B (prohibited uses) and Section C (special permitted uses);

*Underground storage tanks related to these activities are not categorically permitted*

**B. Prohibited Uses.** The following uses are prohibited:

1. Landfills and open dumps as defined in 310 CMR 19.006;
2. Automobile graveyards and junkyards, as defined in M.G.L.c. 140B, §1;
3. Landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to M.G.L.c. 21, §26 through 53; M.G.L.c. 111, §17; M.G.L. c. 83, §6 and 7, and regulations promulgated thereunder;
4. Facilities that generate, treat, store, or dispose of hazardous waste that are subject to M.G.L.c. 21C and 310 CMR 30.00, except for the following:
  - (a) Very small quantity generators as defined under 310 CMR 30.000;
  - (b) Household hazardous waste centers and events under 310 CMR 30.390;
  - (c) Waste oil retention facilities required by M.G.L. c. 21, § 52A;
  - (d) Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters;
5. Petroleum, fuel oil, and heating oil bulk stations and terminals including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5171 and 5983. SIC Codes are established by the US Office of Management and Budget and may be determined by referring to the publication, Standard Industrial Classification Manual, and any other subsequent amendments;
6. Storage of liquid hazardous materials, as defined in M.G.L. c. 21E, and/or liquid petroleum products unless such storage is:

- (a) Above ground level, and;
- (b) On an impervious surface, and
- (c) Either
  - (1) In container(s) or above ground tank(s) within a building, or;
  - (2) Outdoors in covered container(s) or above ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater;

7. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;

8. Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

9. Storage of animal manure unless covered or contained in accordance with the specifications of the Natural Resource Conservation Service;

10. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within 4 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;

11. Discharge to the ground of non-sanitary wastewater including industrial and commercial process waste water, except:

- a) The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
- b) Treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);
- c) Publicly owned treatment works;

12. Stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the district;

13. Storage of commercial fertilizers, as defined in MGL Chapter 128, §64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.

**C. Uses and Activities Requiring a Special Permit.** The following uses and activities are permitted only upon the issuance of a Special Permit by the Special Permit Granting Authority (SPGA) under such conditions as they may require:

- 1. Enlargement or alteration of existing uses that does not conform to the Water Supply Protection District;

2. Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning (except as prohibited under Section B). Such activities shall require a special permit to prevent contamination of groundwater;
3. Any use that will render impervious more than 15% or 2500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. The owner shall permanently maintain any and all recharge areas in full working order.

*Changes of use or modification to existing underground storage tanks are not categorically permitted*

#### **4.2.7 Procedures for Issuance of Special Permit**

1. The Special Permit Granting Authority (SPGA) under this bylaw shall be the Monson Planning Board. Such special permit shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, and Town Water and Sewer Department that the intent of this bylaw, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other town boards or agencies in its decision
2. Upon receipt of the special permit application, the SPGA shall transmit one copy to the Board of Health, the Conservation Commission, and Town Water and Sewer Department for their written recommendations. Failure to respond in writing within 35 days of receipt by the Board shall indicate approval or no desire to comment by said agency. The applicant shall furnish the necessary number of copies of the application.
3. The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 4.16 of this bylaw, and any regulations or guidelines adopted by the SPGA. The proposed use must:
  - (a) In no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the Water Supply Protection District; and
  - (b) Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
4. The SPGA may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the municipality.

5. The applicant shall file six copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. Qualified professionals shall prepare all additional submittals. The site plan and its attachments shall at a minimum include the following information where pertinent:

(a) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;

(b) For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:

(1) Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;

(2) Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;

(3) Evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.

(c) Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.

6. The SPGA shall hold a hearing, in conformity with the provision of M.G.L. Chapter 40A, Section 9, within 65 days after the filing of the application and after the review by the Town Boards, Departments, and Commissions. Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties of interest" as defined in MGL Chapter 40A, §11. The decision of the SPGA and any extension, modification, or renewal thereof shall be filed with the SPGA and Town Clerk within 90 days following the closing of the public hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit. However, regardless of how the permit is approved, no work shall commence until a certification of the permit from the Town clerk is recorded as required in MGL 40A § 11

**4.2.8 Servability.** The Zoning Enforcement Officer shall give written notice of any violation of this Bylaw to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the



nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Building Inspector, the Board of Health, Conservation Commission, and Water and Sewer Department. The cost of containment, clean-up, or other action of compliance shall be borne by the owner and operator of the premises. A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

### **4.3 SCENIC DISTRICT**

**4.3.1 Purpose.** The purposes of the Scenic District Bylaw are to:

1. Create, preserve and enhance areas considered to be of natural scenic beauty including wooded canyons, ridges and fine vistas or viewsheds.
2. Regulate removal, filling, excavation or alteration of land within a scenic area, which is likely to have a significant adverse effect on watershed resources or natural scenic qualities.

**4.3.2 Scope of Authority.** The Scenic District is an overlay district and shall be superimposed on the other districts established by this Bylaw. All regulations of the Monson Zoning Bylaw applicable to such underlying districts shall remain in effect, except that where the Scenic District imposes additional regulations, such regulations shall prevail.

**4.3.3 Designated Area.** The Scenic District Bylaw shall be applied to areas of scenic value as designated on the overlay map entitled “Scenic District, Town of Monson” on file with the Town Clerk.

**4.3.4 General Application Procedure.** Any new construction or establishment of any dwelling, sign or other facility which requires a building permit within the Scenic District is subject to review by the Scenic District Review Board if any such action affects the exterior appearance. The procedures for board review, the Scenic District review criteria and the Scenic District standards are further detailed in Sections 4.3.8, 4.3.9 and 4.3.10, respectively. If the construction, establishment or alteration of any building, sign or facility results in the removal, filling, excavation or alteration of land within a Scenic District, an application for a special permit, as specified in Section 6.6.5, shall be filed with the Zoning Board of Appeals for their review. The procedures for review and development standards are further specified in Section 4.3.12.

**4.3.5 Scenic District Review Definitions.** For the purposes of this Bylaw:

1. **Prominent Ridgelines:** Ridgelines that form the limits of significant viewsheds and provide a natural backdrop for village development. They vary considerably in scale, width, scope, length, alignment, accessibility and relationship to adjacent uses.

2. **Viewsheds:** Locations that provide the observer a visual perspective of the area in terms of foreground, middleground, and background.

**4.3.6 Uses Not Permitted.** The following uses are not permitted in the Scenic District:

1. Surface mining;
2. Pipelines located above ground;
3. Power plants;
4. Refineries or oil or gas tanks storing over 5,000 gallons above ground;
5. Auto sales, storage, or salvage yards;
6. Solid waste disposal sites;
7. Wrecking yards.

**4.3.7 Scenic District Review Board.**

1. In accordance with the provisions of Chapter 40A of the Massachusetts General Laws, a Scenic District Review Board is hereby established. The Scenic District Review Board shall review applications for all actions that are subject to the provisions of this section and shall make recommendations to the appropriate decision-making body concerning the conformance of the proposed action to the design review standards contained herein.

2. The Scenic District Review Board shall consist of five members. Appointments to the Scenic District Review Board shall be made as follows:

- (a) One member shall be appointed by the Chairperson of the Planning Board, with the concurrence of a majority of said Board;
- (b) One member shall be appointed by the Chairperson of the Historical Commission, with the concurrence of a majority of said Commission; and,
- (c) One member shall be appointed by the chairperson of the Conservation Commission, with the concurrence of a majority of said Board.
- (d) Two members shall be appointed by the Chairperson of the Board of Selectmen, with the concurrence of a majority of said Board.

3. The terms of all members of the Scenic District Review Board shall be three years, except that when the Board is originally established, the Board of Selectmen shall make their appointments for a two-year term and the Conservation Commission shall make their appointments for a one-year term.

#### **4.3.8 Procedures for Review by the Scenic District Review Board.**

1. Applications for all actions subject to review by the Scenic District Review Board shall be made by completing an application form and submitting it to the Building Inspector. Application forms are available from the Office of the Building Inspector.
2. All applications to the Scenic District Review Board shall include all information required by the rules and regulations of the Scenic District Review Board, as applicable, in addition to any other information that is required under this Bylaw as part of an application for a special permit, variance or building permit.
3. Upon receipt of an application for Scenic District review, the Building Inspector shall immediately transmit the application to the Scenic District Review Board. The Scenic District Review Board shall review the application and return its recommendations in writing to the Building Inspector within twenty (20) days of the receipt of the application. If the application for Scenic District review is associated with an application for a variance or a special permit, the Building Inspector shall immediately transmit the Scenic District Review Board's recommendations to the Planning Board or Zoning Board of Appeals respectively.

**4.3.9 Scenic District Review Applications.** To facilitate siting and design of buildings sensitively related to the natural setting, applications for Scenic District review of proposed development in the scenic district must be accompanied by the following:

1. Plot plan;
2. View points - Photographs of the development site taken from points along the street, together with a map indicating the distance between these points and the site;
3. Placement, height and physical characteristics of all existing and proposed buildings and structures located on the development site;
4. Landscape plan; and
5. Existing and finished topography of proposed development site map with at least five-foot contour lines.

#### **4.3.10 Scenic District Review Criteria.**

1. Scenic District review should ensure that when man-made structures are built in scenic areas, they are sensitively related to the natural setting and that special consideration has been given to their siting and design.
2. Any Scenic District application may be approved where consistent with the following:
  - (a) The plan has taken maximum feasible measures to reduce the scenic impact of the use in the Scenic District;
  - (b) Where public views will be unavoidably affected by the proposed use, architectural and landscaping measures have been employed so as to eliminate significant degradation of the existing visual character of the site;
  - (c) Operational safeguards have been employed where needed to mitigate against sources of dust, odors or smoke;
  - (d) The standards set forth in Section 4.3 are met.
3. Additionally, design should be aimed at achieving an aesthetic standard or goal in harmony with nature. The following design elements should be given special consideration:
  - (a) Building Mass and Siting. Foundations should be constructed to reflect the natural slope of the terrain. Excessive support members or mechanical systems should be covered or screened. Rooflines and roof surfaces should be an important part of the building design. Sloped roofs should reflect the natural slope of the terrain. The placement of buildings and structures shall not detract from the visual setting or obstruct significant views.
  - (b) Landscaping. The removal of native vegetation, especially timber, shall be minimized and the replacement vegetation and landscaping shall be compatible with vegetation of the designated area.
  - (c) Building Materials and Architectural Style. Natural building materials such as brick, stone, masonry or wood should be emphasized in the design of the exterior. Architectural style shall reflect the traditional New England character of community and shall promote the New England Village concept.
  - (d) Colors. Preference should be given to “earth” colors, such as olive, ochre, sienna, gray, gray green, gray blue, etc. Warm colors may be appropriate in small accessory treatment or for design details.
  - (e) Accessory Buildings. Antennas should not be silhouetted against the view, preferably not mounted on roof. Fencing placed near the street should be of a height to allow for view. Swimming pools and equipment sheds should not be placed in front yard area.

**4.3.11 Scenic District Review Development Standards.** No Scenic District Review application may be approved unless the following standards are met:

1. Buildings and landscaping are to be designed and located on the site to blend with the natural terrain and vegetation and preserve the scenic character of the site.
2. Building sites shall be directed away from the crest of hills in order to preserve the integrity of the area.
3. Retaining walls may be used to create usable yard space in the side and rear yard. Retaining walls in the exposed side and downhill portion of a lot shall be screened with appropriate landscaping materials.
4. Building materials shall blend with the natural landscape.
5. Structures, signs, and plant materials are to be constructed, installed, planted, or painted to complement and enhance scenic views.
6. Potentially unsightly features such as parking lots, communication towers, etc., are to be located in areas not visible from the street in the Scenic District. Where it is not possible to locate such features out of view, they are to be screened from view by planting and/or fences, walls, or berms. Screening as required under this Section is to utilize primarily natural materials rather than solid fencing, preferably vegetation in conjunction with low earth berms.
7. Any grading or earth-moving operation in conjunction with a proposed development is to be planned and executed in such manner that final contours appear to be consistent with the existing terrain both on and adjacent to the site.
8. The number of access roads to or from the street in the Scenic District is to be minimized wherever possible, consistent with safety and circulation needs.
9. Business or industrial uses other than restaurants, recreation, or travel-related uses such as gasoline service stations and roadside stands are to be conducted entirely within enclosed buildings.
10. Trees or groves, which contribute to the visual attractiveness of the site, may not be removed, unless necessary for safety reasons or to provide the least cleared area sufficient to locate and construct approved roads and structures on the site. Selective clearing of vegetation may be permitted where views may be presently obscured by such vegetation adjoining or within 200 feet of a public or private way, subject to approval of tree removals.
11. The size, height and design of on-premise signs should be the minimum necessary for identification.

12. Utilities shall be constructed and routed underground except in those situations where natural features prevent the underground siting or where safety considerations necessitate aboveground construction and routing. Aboveground utilities shall be constructed and routed to minimize detrimental effects on the visual setting.

13. Developments for more than one structure shall incorporate variable setback, multiple orientations, and other site-planning techniques to avoid the appearance of a solid line of development.

#### **4.3.12 Scenic District Earth Removal.**

1. The Scenic District shall comply with the earth removal procedural guidelines as specified in Section 6.6.1 of this Bylaw. However, the applicant may submit, or the Planning Board may require, any further information, which will assist in the review and which, is deemed necessary to determine the effect of the proposed activity in the Scenic District.

2. The applicant shall comply with all requirements of Section 6.6.3 of this Bylaw.

3. Additional exceptions - the following shall be used as additional exceptions to the earth removal Bylaw for Scenic Districts:

(a) The Act does not apply to owners of land who propose to cut forest products on land devoted to forest purposes and who have complied with the provisions of the Forest Cutting Practices Act, M.G.L. Ch. 132, by obtaining a permit thereunder;

(b) The Act does not apply to any activity which is subject to the provisions of the Wetlands Protection Act, M.G.L. Ch. 131, s. 40, as indicated by a valid order of conditions or positive Determination of Applicability issues thereunder.

(c) The Act shall not apply to any structure (or change of land use) commenced before the Act becomes effective hereunder.

#### **4. Violation and Enforcement**

(a) Any person, other than a bona fide purchaser, who purchases or otherwise acquires land upon which an activity has been done in violation of this Bylaw shall forthwith comply with the conditions of the special permit or restore the land to its condition prior to the violation. Failure to do so is in itself a violation of this Bylaw.

(b) The Zoning Board of Appeals, its agents, officers, and employees, may enter upon privately owned land for the purpose of carrying out this Bylaw.

(c) If an applicant fails to commence work within one year following the date of issuance of an order, such inaction shall constitute an abandonment of the project, and the Zoning Board of Appeals, after notice to the applicant, may revoke the special permit.

(d) The Zoning Board of Appeals may revoke an order if it finds that the applicant has exceeded the scope of the activity as set forth in the special permit or has not complied with the conditions set forth in the special permit, or if it determines that facts not available or not brought to its attention at the time the special permit was issued, warrant such revocation.

## **SECTION 5.0 GENERAL REGULATIONS**

### **5.1 PERFORMANCE STANDARDS FOR GENERAL AND CENTRAL COMMERCIAL AND INDUSTRIAL USES**

**5.1.1 Purpose and Applicability.** The purpose of environmental performance standards is to ensure that any use allowed by right or Special Permit in any district is conducted in a manner which does not adversely affect the surrounding natural or human environment by creating a dangerous, injurious or objectionable condition. The following environmental controls shall be enforced by the building inspector and shall apply throughout the life of the use or structure.

#### **5.1.2 Lighting**

1. Any outdoor lighting fixture newly installed or replaced shall be shielded so that it does not produce a strong, direct light beyond the property boundaries.
2. No light shall be taller than twenty-five (25) feet.

#### **5.1.3 Noise**

1. Excessive noise at unreasonable hours shall be muffled so as not to be objectionable due to volume, frequency, shrillness or intermittence.
2. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any use or activity shall not exceed the following limits at the property line of the sound source:

Source Pressure Level Limits Measured in dB(A's)

District	7 a.m. - 10 p.m.	10 p.m. - 7 a.m.
General & Central Commercial	65	60
Industrial	70	65
Residential	55	45

Sound pressure level shall be measured at all major lot lines, at a height of at least four (4) feet above the ground surface. Noise shall be measured with a sound level meter

meeting the standards of the American Standards Institute, ANSI SI.4-1961 “American Standards Specification for General Purpose Sound Level Meters”. The instrument shall be set to the A-weighted response scale and the meter to show response. Measurements shall be conducted in accordance with ANSI SI.2-1962 “American Standard meter for the Physical Measurements of Sound”.

3. Sound levels specified shall not be exceeded for more than 15 minutes in any one day, except for temporary construction or maintenance work, agricultural activity, timber harvesting, traffic or railway noise, church bells, emergency warning devices, parades or other similar special circumstances.

4. No person shall engage in or cause very loud construction activities on a site abutting residential use between the hours of 10 p.m. of one day and 7 a.m. of the following day.

**5.1.4 Odor.** No use shall be permitted to produce excessive, offensive or harmful odors, fumes, dust or vibration perceptible without instruments for more than 15 minutes in any one day at any location more than 200 feet from the boundaries of the originating premises, except for temporary construction or maintenance work, agricultural activity, parades or similar special circumstances.

**5.1.5 Storm Water Runoff.** In those areas not served by storm drains, the rate of surface water run-off from a site shall not increase after construction. If needed to meet this requirement and to maximize groundwater recharge, increased runoff from impervious surfaces shall be recharged on site by being diverted to vegetated surfaces for infiltration or through the use of detention ponds. Dry wells shall be used only where other methods are and shall require oil, grease and sediment traps to facilitate removal of contaminants.

**5.1.6 Erosion Control.** The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree removal and any grade changes shall be in keeping with the general appearance of neighboring developed areas. These regulations are intended to supplement the Wetlands Protection Act. Erosion of soil and sedimentation of streams and water bodies shall be minimized by using the following erosion control practices:

1. The duration of exposure of disturbed areas due to stripping of vegetation, soil removal, and grading shall be kept to a minimum.
2. During construction, temporary vegetation and/or mulching shall be used to protect exposed areas from erosion. Until a disturbed area is permanently stabilized, sediment in runoff water shall be trapped by using staked haybales or sedimentation traps.
3. Permanent erosion control and vegetative measures shall be in accordance with the erosion/sedimentation/vegetative practices recommended by the Soil Conservation Service.



4. All slopes exceeding 15% resulting from site grading shall be either covered with 4 inches of topsoil and planted with a vegetative cover sufficient to prevent erosion or be stabilized by a retaining wall.

5. Dust control shall be used during grading operations if the grading is to occur within 200 feet of an occupied residence or place of business. Dust control methods may consist of grading fine soils on calm days only or dampening the ground with water.

**5.1.7 Water Quality.** All outdoor storage facilities for fuel, hazardous materials or wastes, and potentially harmful raw materials shall be located within an impervious, diked containment area adequate to hold the total volume of liquid kept within the storage area.

**5.1.8 Explosive Materials.** No highly flammable or explosive liquids, solids or gases shall be stored in bulk above ground, unless they are located in anchored tanks at least seventy-five (75) feet from any lot line, town way or interior roadway or 40 feet from lot line for underground tanks; plus all relevant federal and state regulations shall also be met. Propane gas tanks in 100 lb. cylinders (or smaller) shall be exempt from these safety regulations.

**5.1.9 Screening and Buffer Zones.** Exposed storage areas, exposed machinery installation, sand and gravel extraction operations and areas used for the storage or collection of discarded automobiles, auto parts metal or any other articles of salvage or refuse shall have sufficient setbacks and screening to provide a visual buffer sufficient to eliminate their adverse impact on surrounding properties (a dense evergreen hedge 6 feet or more in height). All such plantings shall be maintained as an effective visual screen; plants, which die, shall be replaced within one growing season. Where a potential safety hazard to children would be likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and be maintained in good condition.

**5.1.10 Landscaped Buffer Strip.** A landscaped buffer strip is intended to provide in a reasonable time a visual barrier between different land uses. Except for vehicular and pedestrian passways, the area shall be used only for an interplanting of deciduous and evergreen trees and shrubs, with lawn or other suitable and appropriate ground cover. Suitable existing growth may be incorporated into the planting. Where considered appropriate in the judgment of the permit granting authority, walls and fences may be used in lieu of plantings. A planting plan showing the types, sizes and locations of material to be used shall be subject to the approval of the permit granting authority. The permit granting authority may waive the requirements of the visual barrier where it deems it advisable, for example, where a street is the dividing line between different land uses. Proper maintenance of a required landscaped buffer strip shall be the responsibility of the owner, and shall be a condition of conformance with the Zoning Bylaw. The buffer strip shall be sufficient to mitigate any noise and/or dust that may arise during the construction phase of the development or that may result from the normal daily operation of the development.

## **5.2 COMMERCIAL DEVELOPMENT AND LANDSCAPING**

### **5.2.1 Purposes.**

1. To promote highway traffic safety and protect the capability of state and local roads to conduct traffic smoothly and efficiently;
2. To promote an attractive and viable commercial district and expand the commercial tax base of the Town;
3. To protect the rural character, aesthetic visual qualities and property values of the Town and neighboring properties;
4. To discourage unlimited commercial “strip development” and curb cuts along existing roads and encourage commercial growth in nodes and clusters.

**5.2.2 General.** Commercial developments shall be permitted in accordance with the Schedule of Use Regulations – Section 3.1 and with the additional requirements specified herein.

### **5.2.3 Access**

1. The number of curb cuts on local roads shall be minimized. To the extent feasible, access to businesses shall be provided via one of the following:
  - (a) Access via a common driveway serving adjacent lots or premises;
  - (b) Access via an existing side street;
  - (c) Access via a cul-de-sac or loop road shared by adjacent lots or premises.
2. One driveway per business shall be permitted as a matter of right. Where deemed necessary by the Planning Board, two driveways may be permitted as part of the Site Plan Approval process, which shall be clearly marked “entrance” and “exit”.
3. Curb cuts shall be limited to the minimum width for safe entering and exiting, and shall in no case exceed 24 feet in width.
4. All driveways shall be designed to afford motorists exiting on to local roads with safe sight distance as determined by the American Association of State Highway and Transportation Officials (AASHTO), Chapter 3.
5. The proposed development shall have assured safe interior circulation within its site by separating pedestrian and vehicular traffic.

## **5.3 SIGN BY-LAW**

**5.3.1 Applicability.** Any new sign whose total area exceeds two (2) square feet cannot be attached, erected or otherwise installed as provided by this section until after a sign permit has been issued by the Building Inspector. All signs, wherever located, must be in conformity with the State Building Code, available from the Building Inspector or Zoning Enforcement Officer.

**5.3.2 General Standards.** Any exterior sign or advertising device hereafter erected or maintained, must, unless expressly provided, conform to the following restrictions in all districts.

1. The combined total square foot area of a sign or signs must be in accordance with the schedule shown below:

<b>Type of District</b>	<b>Max. Sq. Ft.</b>
Residential	3
Temporary (residential)	6
General & Central Commercial	100
Industrial	100
Temporary (Commercial & Industrial)	20
Churches, Public Schools, Libraries, Museums and Parks, Parish Houses and Schools, Philanthropic Institutions, Playgrounds and Municipal Buildings	10

Where more than one sign is desired, several signs may be used provided that their total combined area does not exceed the amounts shown in the schedule. The combined area of all signs shall not exceed the amounts allowed in this schedule.

2. Any traffic or directional signs owned or installed by a government agency shall be permitted.

3. If affixed to, suspended from, or incorporated as part of a building, no sign or advertising device shall project more than 24 inches over or beyond any building.

4. If any sign is supported by or suspended from a pedestal, post, or tree, it cannot project more than 24 inches over or into any pedestrian or vehicular way customarily used by the public.

5. No sign shall project or extend more than six (6) feet above the eavesline or parapet of any building to which it is affixed.

6. If any sign or advertising device is free standing, it cannot extend more than twelve (12) feet above ground level.

7. Signs printed or placed on the inside of the window shall be permitted, provided that the aggregate area of such signs does not exceed twenty (20) percent of the area of the window glass or six (6) square feet, whichever is the lesser.

8. No sign nor advertising device shall incorporate, or be lighted by flashing or blinking lights, or be designed to attract attention by a change in intensity or be repeated motion.

9. No sign shall constitute a hazard to pedestrian or vehicular traffic because of intensity or direction of illumination.

10. Any illumination provided for signs shall be white only, the light-source lamp or tube shall be shaded from view off the premises; and the light shall not be intermittent.

11. Signs shall be located at least twenty (20) feet from the front lot line, unless it is attached to the front wall of a building located less than twenty (20) feet from the front lot line.

12. Signs should not project into or over a public way and are not attached to poles of telephone or electric light power companies.

13. No sign shall be posted on vegetation.

**5.3.3 Residential District Signs.** In any Residential District, the following exterior signs, and no others are permitted:

1. One sign not over three square feet in area for each family residing on the premises. Such signs may include identification of any accessory professional office or other accessory use permitted in any residential district.

2. Except for a professional nameplate and a residential number plate, any sign in any residential district shall be set back at least twenty feet from the front lot line unless it is attached to the front wall of a building located less than 20 feet from the street lot line.

3. No billboard or sign on which the principle product or service advertised is not regularly produced or available on the premises shall be erected or maintained.

4. One identification sign for each membership club, funeral establishment, community facility or public facility is permitted provided that the sign shall not exceed ten (10) square feet in surface area.

5. Signs pertaining to the lease or sale or use of a lot or building provided that such signs do not exceed a total area of six (6) feet. Such signs shall be removed forthwith upon sale or rental of the premises advertised.

6. Signs prohibiting trespass, hunting and the like, not to exceed two (2) square feet.

7. Signs designating historical places, natural resources or points of interest must be of a size and design approved by the Historical Commission or by the Scenic District Review Board.

**5.3.4 General and Central Commercial and Industrial District Signs.** In the above districts, the following exterior signs and no others are permitted:

1. Signs permitted in the Residential Districts subject to the same regulation.

2. The TOTAL maximum area of all advertising signage shall be 100 square feet; the maximum height to the top of the sign face shall be fifteen (15) feet. All dimensions include border, trim, cutouts and extension but exclude base or apron supports and other structural members.
3. Signs affixed to, suspended from, or incorporated as part of a building, provided that the total area of the sign on a wall shall not exceed twenty (20) square feet.
4. A marquee over the principle entrance to a place of public assembly.
5. One square foot of freestanding signage is permitted for each foot of street frontage. Signs in excess of (20) square feet in surface area but less than one hundred (100) square feet in surface area require a special permit from the ZBA. Freestanding signs shall be setback at least fifteen (15) feet from any street or lot line; and, it shall be erected at a height of not less than five (5) feet nor more than fifteen (15) feet above ground or sidewalk.

### **5.3.5 Non-Conforming and Temporary Signs**

1. Signs legally existing at the time this Bylaw is adopted may continue as non-conforming uses, subject to the provisions of Section 3.3.2 hereof (Non-Conforming Uses). This provision shall not apply to billboards, signs and other advertising devices subject to the provisions of Sections 29 through 33, inclusive of Chapter 93, and to Chapter 93D of the General Laws.
2. A directional or identification sign may be erected and maintained in any district where the Board of Appeals finds that such sign will serve the public safety, and will be of such size, location and design as will not be detrimental to the neighborhood.
3. All signs and hand bills erected for a permitted use, by a Special Permit, or special event, including signs advertising the sale or rental of premises, shall be removed within a week when circumstances leading to their erection no longer apply. A fine shall be assessed after this one-week period.
4. In any district, one temporary sign of an architect, engineer or contractor erected during the period such person is performing work on the premises on which such sign is erected and shall be permitted, provided: it shall not exceed four (4) square feet in surface area; and, it shall be set back at least ten (10) feet from the street lot line.

**5.3.6 Signs Allowed on Special Permits.** The Board of Appeals may grant, by Special Permit, more than the number of signs herein permitted or signs of a maximum size other than herein specified, if it determines that the architecture of the building, the location of the building or the land or nature of the use being made of the building or the land is such that additional signs or signs of a larger maximum size should be permitted in the public interest.

**5.3.7 Permit Fees.** A permit of \$30 for RR and RV districts and \$50 for all other districts shall be paid to the Building Inspector for each sign permit issued under this Bylaw.

### **5.3.8 Enforcement**

1. **Maintenance and Removal.** Every sign shall be maintained in good structural conditions at all times. All signs shall be kept neatly painted, including all metal parts and supports thereof that are not galvanized or of rust resistant material. The Building Inspector or the Zoning Enforcement Officer shall inspect and shall have the authority to order the painting, repair, alteration or removal of a sign which shall constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, or obsolescence.

2. **Abandoned Signs.** Except as otherwise provided in this article, any sign that is located on property which becomes vacant and is unoccupied for a period of three months or more, or any sign which pertains to a time, event or purpose which no longer applies shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change of ownership or management of such business shall not be deemed abandoned, unless the property remains vacant for a period of six months or more. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises.

3. **Dangerous or Defective Signs.** No person shall maintain or permit to be maintained on any premises owned or controlled by him any sign, which is in a dangerous or defective condition. Any such sign shall be removed or repaired by the owner of the sign or the owner of the premises.

4. **Removal of Signs by the Building Inspector or Zoning Enforcement Officer.** The Building Inspector or Zoning Enforcement Officer shall cause to be removed any sign that endangers the public safety, such as an abandoned, dangerous, or materially, electrically, or structurally defective sign, or a sign for which no permit has been issued.

The Building Inspector or Zoning Enforcement Officer shall prepare a notice which shall describe the sign and specify the violation involved and which shall state that, if the sign is not removed or the violation is not corrected within 20 days, the sign shall be removed in accordance with the provision of this section.

All notices mailed by the Building Inspector or Zoning Enforcement Officer shall be sent by certified mail. Any time periods provided in this section shall be deemed to commence on the date of the receipt of the certified mail. For all other signs, the notice shall be mailed to the owner of the property on which the sign is located as shown on the last equalized assessment roll. If known, or with reasonable care should be known, the notice shall be mailed to or delivered to the owner of the sign and the occupant of the property.

Any person having an interest in the sign or the property may appeal the determination of the Building Inspector or Zoning Enforcement Officer ordering removal or compliance

by filing a written notice of appeal with the Monson Board of Selectmen within 45 days after the date of mailing the notice, or 45 days after receipt of the notice if the notice was not mailed.

## **5.4 OFF STREET PARKING AND LOADING**

**5.4.1 Required Minimum Parking Spaces.** Unless parking facilities are otherwise specifically approved by the Zoning Board of Appeals in all districts, there shall be provided and maintained off-street automobile parking and spaces accessed by a driveway in connection with the construction, conversion or increase by units or dimensions of buildings, structures and use in at least the following minimum amounts:

<u>Use</u>	<u>Required Minimum Space</u>
<b>Residential Uses</b>	
Single-Family Dwelling and Accessory Apartment	2 spaces per dwelling unit located to the rear of the front of the structure.
Home Occupation Dwelling Conversions	1 additional space 2 spaces per dwelling unit, located to the rear of the front yard.
Rooming House, Boarding House	1 space for each room rented in addition to dwelling unit requirements to the rear of the front yard.
Multi-family dwelling	1 ½ spaces per dwelling unit.
Elderly and Handicapped Congregate Housing	1 ½ spaces for each sleeping room
<b>Government, Institutional and Public Service Uses</b>	
Theater, Assembly Hall or Auditorium having fixed seats	1 space for each 4 seats
Other places of public assembly and public recreation including libraries, museums, art galleries, craft centers, government buildings, recreation and community centers, membership clubs	1 space for each 4 legal occupants, or where benches are used, 1 space for each 8 linear feet of bench where no fixed seats are used (as in a museum), for each 80 sq.ft. of public floor area, there shall be 1 parking space
Day Care, Nursery School	1 space per 2 employees
Elementary and Junior High School	1 space for each teacher and employee, including space for the gymnasium or the

High School	auditorium whichever has the larger capacity. 1 space for each teacher and employee, plus one space for each 10 students, including space for the gymnasium or the auditorium, whichever has the largest capacity
Hospital, Sanitariums, Nursing and Convalescent Homes	1 space for each 2 beds
<b>Business Uses</b> Offices, stores and similar business establishments, including personal service shops, banks and financial offices	1 space for each 200 sq.ft. of gross floor area, exclusive of storage space, on the ground floor plus one additional space for each 400 sq. ft. of gross floor area, exclusive of storage space, on all other floors
Restaurant or Tavern	1 space for each 4 seats
Kennels, veterinary establishments	Parking spaces adequate to accommodate, under normal conditions, the vehicles of employees, customers, and visitors to the premises shall be provided as determined by the Board of Appeals.
Motor Inn or Tourist Home	1 space for rental unit or guest, plus 2 spaces.
Gas/Service Station	3 spaces/service bay, but not less than 1 space/100 sq.ft. gross floor area.
For all other permitted commercial or industrial uses, including farm stands, open lot sales, place of the building trades, storage or distribution plants	Adequate parking space to accommodate, under normal conditions, the car of occupants, employees, members, customers, clients, and visitors.



## **General Requirements**

### **Commercial Recreational Development**

Parking spaces adequate to accommodate, under normal conditions, the vehicles of employees, members, patrons and persons using the facilities shall be provided as determined by the Zoning Board of Appeals

Any use permitted in this Bylaw not interpreted to be covered by this schedule

Closest similar use as shall be determined by the Building Inspector

**5.4.2 Parking Spaces for Dwellings.** Parking spaces for dwellings may be provided in a garage or as open parking spaces.

**5.4.3 Parking Lot Space Dimensions.** A required parking space shall contain not less than 180 sq. ft. in the case of a parking lot, or at least 130 sq. ft. in the case of garage parking, with free access to each space.

### **5.4.4 Loading Areas**

1. Provisions shall be made for the loading and unloading of all trucks off the street and highway right-of-way, and without encroachment of required areas. The adequacy of space, and suitably located area, shall be determined among other things by expected volume, building use, and relation to streets and access driveways.

2. Not less than one loading space, 10 ft. x 25 ft. with 14 ft. height clearance, shall be required for a building with a gross floor area of 10,000 sq. ft. or more.

## **SECTION 6.0 SPECIAL REGULATIONS.**

### **6.1 SCENIC ROADS**

No repair, maintenance, reconstruction, or paving work that involves or includes the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof shall take place on the following streets except with the prior written consent of the Planning Board.

### **6.2 MULTI-FAMILY DWELLINGS**

**6.2.1** Multi-family dwelling units shall be permitted in the RV and RR districts only after Town Meeting approval and upon issuance of a Special Permit with Site Plan Approval from the Zoning Board of Appeals as specified in Sections 7.3 and 7.4 of this Bylaw, and in accordance with the additional requirements specified herein.

#### **6.2.2 General Requirements**

1. No land shall be used for multiple dwelling purposes, and no building shall be altered, enlarged, nor erected for multiple dwelling use, except in a "Multiple Dwelling District", established after a public hearing and a town meeting under the Zoning Enabling Act, except as provided in Section 3.1. No multiple dwelling district shall be approved until the Monson Board of Health shall have determined that the land will be suitable and safe for the disposal of sanitary sewage, and that an adequate potable water supply will be provided.

2. After establishment of a Multiple Dwelling District, the use of land therein shall be subject to a Special Permit issued by the Board of Appeals in conformance with the requirements of this Section.

3. No zoning permit shall be issued for a multiple family dwelling or accessory building, except in strict conformance with the site plan, endorsed with the approval of the Board of Appeals. A certificate of occupancy shall not be issued for a multiple family dwelling until all of the requirements of this Section have been met, unless incomplete public improvements and protective provisions are covered by a performance bond, filed with and acceptable to the Board of Appeal.

4. The applicant for an establishment in a multiple dwelling district shall submit to the Board of Appeals an application on the prescribed form, together with a site plan, topographic map, and data containing all of the information required hereafter. All public improvements and all streets shall be provided under the rules and regulations governing the subdivision of land for the Town of Monson, including bonding for said facilities. Prior to a public hearing on such application, the Planning Board and the Conservation Commission shall make a report with recommendations to the Board of Appeals, which report shall cover:

(a) The relationship of the proposal to the Master Plan of Development for the Town.

(b) The adequacy of provisions to protect and preserve the character of the Neighborhood.

(c) The conformance of the site plan to this Bylaw.

5. In Multiple Dwelling Districts, no parts of any building nor structure shall be used, except for:

(a) Any use permitted in a residence district, except that two and three-family dwelling houses shall be of the duplex type; one dwelling unit over another is not permitted.

(b) Buildings and group buildings designed and used for multiple dwelling purposes, provided no single building nor group of connected buildings contain more than eight dwelling units.

(c) Uses accessory to a multiple dwelling use, but expressly excluding any commercial or retail enterprises.

**6.2.3 Additional General Requirements.** The following standards shall be used as additional requirements in the special permit/site plan approval process for all multi-family units:

1. Multi-family structures shall have access on roads having sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic generated by the site.
2. More than one dwelling may be placed on a lot, but no principal structures shall be placed closer to each other than 50 feet and must be visually separated by trees and plantings. In addition, each dwelling must be provided with access, drainage and utilities functionally equivalent to that provided under the Planning Board's Subdivision Rules and Regulations.
3. Parking areas shall not be located within a required front, rear or side yard as specified in the dimensional regulations and shall be screened from public ways and adjacent or abutting properties by building location, fencing or planting. No individual parking area shall contain more than twenty (20) spaces. Two parking spaces shall be provided for each dwelling unit. One additional space for visitor parking shall be provided for every ten resident parking spaces.
4. No building shall be floodlit. Drives and parking areas shall be illuminated only by shielded lights not higher than fifteen (15) feet.
5. Multi-family structures shall be separated from adjacent properties by buffer strips consisting of trees and/or fencing sufficient to minimize the visual and noise impacts of the development.
6. In the Rural Residential district, a minimum of 40% of the area of each lot shall be permanently reserved as open space. A minimum of 50% of land reserved as open space shall be grassed or landscaped land available for active and passive recreation.
7. Connecting walkways shall be provided between structures and parking areas within the site.
8. All land not devoted to dwellings, accessory uses, roads, or other development shall be set aside as common land for recreation, conservation, or agricultural uses which preserve the land in essentially its natural condition.

**6.2.4 Additional Utility Requirements for Application to Units without Municipal Services**

1. For dwellings to be served by on-site water and waste disposal systems, the applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the special permit application. No septic system serving the project shall exceed 2,000 gallons per day sewage flow. More than one septic system may serve the site in order to meet this requirement.
2. Dwellings with on-site waste disposal systems shall be allowed only upon demonstration by the applicant that the groundwater quality of the boundaries of the lot will not fall below the standards established by the Massachusetts Department of Environmental Protection in the published "Drinking Water Regulations," or by the U.S. Environmental Protection Agency in the published "Drinking Water Regulations" or where groundwater quality is already below these standards, upon determination that the activity will result in no further degradation. Where compliance is in doubt, the Zoning Board of Appeals may hire a Professional Engineer to analyze and certify groundwater quality impacts, and may charge the applicant for the cost of such analysis.

#### **6.2.5 Community Association**

1. If a multi-family development is owned by more than one person or converted to ownership of more than one person, a non-profit, incorporated community association shall be established, requiring membership of each property owner in the development. The community association shall be responsible for the permanent maintenance of all-communal water and septic systems, common open space, recreational and thoroughfare facilities. A community association agreement of covenant shall be submitted with the special permit/site plan approval application guaranteeing continuing maintenance of such common utilities, land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of Town Counsel and the Permit Granting Authority.
2. Such agreements or covenants shall provide that in the event that the association fails to maintain the common open land in reasonable order and condition in accordance with the agreement, the Town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development.

#### **6.2.6 Common Open Space Ownership**

1. All common open land shall be either:
  - (a) Conveyed to a community association owned or to be owned by the owners of lots within the development. If such a community association is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity;

(b) Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space;

(c) Conveyed to the Town, at no cost, and be accepted by it for a park or open space use. Such conveyance shall be at the option of the Town and shall require the approval of the voters at a Town Meeting.

2. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways. Such restrictions shall further provide for maintenance of the common land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance of drainage, utilities and the like.

### **6.3 ELDERLY OR HANDICAPPED CONGREGATE HOUSING**

Congregate elderly or handicapped dwelling units shall be permitted in the RV and RR districts only upon issuance of a Special Permit with Site Plan Approval from the Zoning Board of Appeals, as specified in Sections 7.3 and 7.4 of this Bylaw, and in accordance with the additional requirements specified here.

**6.3.1 Additional Requirements.** The following standards shall be used as additional requirements in the special permit/site plan approval process for all congregate elderly or handicapped housing units:

1. The applicant shall comply with all requirements of Sections 6.2.2 and 6.2.3 of this Bylaw.
2. Congregate elderly and handicapped dwellings shall comply with all dimensional regulations for multi-family dwellings contained in the dimensional and density regulations.
3. The maximum number of elderly or handicapped occupants per structure shall not exceed six.

### **6.4 OPEN SPACE COMMUNITIES**

**6.4.1** Open Space Communities shall be permitted in the RR district only upon issuance of a Special Permit with Site Plan Approval from the Planning Board, as specified in Sections 7.3 and 7.4 of this Bylaw, and in accordance with the additional requirements specified herein.

**6.4.2 General Description.** An “Open Space Community” shall mean (a single family residential) development in which the houses are clustered together into one or more groups on the lot and separated from each other and adjacent properties by permanently protected open space.

**6.4.3 Purposes.** The purposes of open space community development are to:

1. Allow for greater flexibility and creativity in the design of residential subdivisions, provided that the overall density of the development is no greater than what is normally allowed in the district;
2. Encourage the permanent preservation of open space, agricultural lands and other natural resources;
3. Maintain the traditional New England rural character and land use pattern in which small villages contrast with open space and farmlands;
4. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner;
5. Encourage a less sprawling form of development that consumes less open land.

**6.4.4 Additional General Requirements.** The following standards shall be used as additional requirements in the special permit/site plan approval process for all open space communities:

1. The development shall include single-family dwellings only.
2. The minimum land required for a cluster development shall be ten (10) acres and the parcel shall be held in single ownership or control at the time of application.
3. Each lot shall have adequate access on a public or private way.
4. Each lot shall be of a size and shape to provide a building site, which shall be in harmony with the natural terrain and other features of the land.
5. There shall be an adequate, safe, and convenient arrangement of pedestrian circulation, facilities, roadways, driveways, and parking.
6. The site plan shall identify the location and extent of all wetlands on the site as determined by the Conservation Commission under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40.

**6.4.5 Additional Utility Requirements**

1. All structures which require plumbing shall be connected to a public sanitary sewer, if available, or to a communal septic system at no expense to the municipality.
2. For dwellings to be served by on-site waste disposal systems, the applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the special permit

application. No communal septic system serving the development shall exceed sewage flow of 2,000 gallons per day. Septic systems shall be placed in the development to maximize the distance between systems and shall be placed within common areas rather than on individual lots. Maintenance of communal septic systems shall be the responsibility of the homeowners association specified in Section 6.4.8.

No cluster development shall be approved unless the applicant can demonstrate to the satisfaction of the Planning Board that the potential for groundwater pollution is no greater from the proposed open space community development than would be expected from a conventional subdivision with single family houses on lots meeting the normal lot size requirements located on the same parcel. Where necessary, the Planning Board may hire a Professional Engineer to analyze and certify groundwater quality impacts, and may charge the applicant; for the cost of such analysis.

#### **6.4.6 Dimensional and Density Requirements**

1. A one-family detached dwelling, or lawful accessory building, may be constructed on a lot with an Open Space Community development although such lot has less area and frontage than normally required, as herein specified.
2. The maximum number of dwelling units permitted in an open space community shall be calculated based upon 1.5 units per acre for the net developable acreage remaining once the area of all wetlands, all areas unsuitable for on-site sewage disposal and lands with slopes greater than twenty-five (25) percent have been subtracted from the total acreage of the property.
3. Under the supervision of the Conservation Commission and in accordance with the provisions of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, all wetlands shall be identified, and their area subtracted from the net developable acreage of the total parcel.
4. Under the supervision of the Board of Health, and in conformance with Title V, percolation tests shall be conducted for all lots in the total acreage of the property, which would be developed in a standard subdivision layout. The area of those lots which is determined to be not suitable for on-site sewage disposal shall be subtracted from net developable acreage of the total parcel.
5. Lot sizes shall not be less than one-half (50%) of the minimum lot size normally required in the district, or thirty thousand (30,000) square feet per lot.
6. In no instance shall a designated lot have less than 100 feet of frontage on a public or private way.
7. The frontage requirement, the linear distance of a lot measured along the street right-of-way for the overall development, shall also be set back 500 feet from the street right-

of-way by a buffer strip of at least fifty (50) feet in width which shall include trees and shall be kept in a natural or landscaped condition.

8. All residential structures and accessory uses within the development shall be set back from the boundaries of the development by a buffer strip of at least fifty (50) feet in width which shall include trees and shall be kept in a natural or landscaped condition.

#### **6.4.7 Common Open Space Requirements**

1. All land not devoted to dwellings, accessory uses, roads, or other development shall be set aside as common land for recreation, conservation, or agricultural uses which preserve the land in essentially its natural condition.

2. The total area of common open space shall equal or exceed the area by which all single-family dwelling lots are reduced below the basic minimum lot area normally required in the zoning district.

3. The following lands shall not be used to meet the common open space requirements:

(a) Lands within the floodplain district;

(b) Lands identified as wetlands in accordance with the Massachusetts Wetlands Protection Act;

(c) Lands with slopes greater than twenty-five percent (25%)

4. Further subdivision of common open land or its use for other than recreation, conservation, or agriculture, except for easements for underground utilities and septic systems, shall be prohibited. Structures or buildings accessory to recreation, conservation, or agricultural uses may be erected but shall not exceed 5% coverage of such common open land.

#### **6.4.8 Common Open Space Ownership**

1. All common open land shall be either:

(a) Conveyed to a community association owned or to be owned by the owners of lots within the development. If such a community association is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;

(b) Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space;

(c) Conveyed to the Town, at no cost, and be accepted by it for a park or openspace use. Such conveyance shall be at the option of the Town and shall require the approval of the voters at a Town Meeting.



2. In any case where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways. Such restrictions shall further provide for maintenance of the common land in a manner, which will ensure its suitability for its function, appearance, cleanliness, and proper maintenance of drainage, utilities and the like.

#### **6.4.9 Community Association**

1. A non-profit, incorporated community association shall be established, requiring membership of each lot owner in the open space community. The community association shall be responsible for the permanent maintenance of all-communal water and septic systems, common open space, recreational and thoroughfare facilities. A community association agreement of covenant shall be submitted with the special permit/site plan approval application guarantying continuing maintenance of such common utilities, land and facilities, and assessing each lot a share of maintenance expenses. Such agreement shall be subject to the review and approval of Town Counsel and the Planning Board.
2. Such agreements or covenants shall provide that in the event that the association fails to maintain the common open land in reasonable order and condition in accordance with the agreement, the Town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development.

#### **6.4.10 Procedures and Pre-Application Review**

1. Applicants for Open Space Communities shall follow the Special Permit procedures specified in Section 7.3 and the Site Plan Approval procedures specified in Section 7.4.
2. To promote better communication and to avoid misunderstanding, applicants are encouraged to submit a Preliminary Plan for review by the Planning Board prior to the application for a Special Permit. Such Preliminary Plans shall comply with the Town's Subdivision Control Regulations.

The Planning Board's approval of a Special Permit hereunder shall not substitute for compliance with the Subdivision Control Act nor oblige the Planning Board to approve a related Definitive Plan for subdivision, nor reduce any time periods for Board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under law, adopt regulations establishing procedures for submission of a combined Site Plan/Development Plan and application which shall satisfy this section and the Board's regulations under the Subdivision Control Act.

A copy of Site/Plan Development plan shall be submitted to the Planning Board with the application for a Special Permit. Following approval of the Special Permit, a Definitive plan shall be submitted to the Planning Board consistent with their Subdivision Regulations and in substantial conformity with the approved Site Plan/Development Plan, except where the Cluster Development does not constitute a subdivision under the Subdivision Control Law.

## **6.5 SINGLE FAMILY DWELLINGS ON ESTATE LOTS**

The purpose of this regulation is to allow for the creation of lots for single-dwelling units only, with less than the required frontage, in exchange for increased square footage, for the purposes of preservation of open space and decreasing density in given areas.

Single-family dwellings on estate lots shall be permitted in the RR districts only upon the issuance of a Special Permit from the Planning Board as specified in Section 7.3 of this by-law, and in accordance with the additional requirements specified herein.

1. Estate lots shall be created from one lot in existence at the time of adoption of the by-law and which conforms to all the provisions of the zoning by-law. No more than two (2) estate lots may be created from an existing lot which was in existence at the time of the adoption of this estate lot by-law amendment and which conforms to all of the provisions of the zoning by-law.
2. A filing fee in the amount of \$100.00 per lot, plus all Legal Notification Fees will be paid by the applicant to the Town of Monson.
3. The estate lot(s) shall have a minimum street frontage of not less than forty (40) feet and an access width of not less than forty (40) feet from the front lot line to the principal structure. The front lot shall meet all of the zoning dimensional requirements normally required in the district.
4. No more than two (2) estate lots may be adjacent to each other at the street line.
5. The area of an estate lot shall be at least ten (10) acres including the access strip.
6. The width of the lot where the principal building is to be constructed shall equal or exceed the distance normally require for street frontage in the district.
7. Front, rear and side yards must equal or exceed those normally required in the district.
8. The grade length and location of access driveways shall be constructed and maintained to provide:
  - (a) Adequate access by driveway and turn-around for vehicles, including sanitary and emergency vehicles year round;

(b) A width of at least fifteen (15) feet with drainage and culverts where necessary;

(c) A maximum grade of twelve percent (12%);

(d) Recommendation from the highway and fire departments;

(e) No parking areas or structures shall be allowed in the access strip.

9. There shall be maintained or kept a naturally occurring or a planted vegetated buffer zone between any estate lot(s) and any front lot sufficient to provide privacy between the two lots.

10. Plan submitted shall include the statement "Lot(s) is an estate lot; building is permitted only in accordance with the special permit estate lot provisions of the Monson Zoning By-Law.

11. The Planning Board shall not endorse any plan under the Subdivision Control Law for the purpose of creating an estate lot unless the plan depicts the entire parcel which was in existence at the time of the adoption of this by-law and which shows the lot from which the estate lot was created.

## **6.6 EARTH REMOVAL AND FILLING OF LAND BYLAW**

In any zoning district, removal or addition of soil, loam, sand, gravel, clay, sod, quarried stone, or other mineral deposit shall not be permitted except by special permit from the Zoning Board of Appeals.

### **6.6.1 Definitions.** For the purposes of this Bylaw:

1. "Earth Material" shall include soil, sod, loam, peat, clay, sand, gravel or quarried stone and other natural earth materials.

2. "Board" shall mean the Zoning Board of Appeals.

**6.6.2 Procedure for Earth Removal.** The removal of earth material from land in Monson, not in public use, shall be permitted only after the Board issues a special permit. All applications for special use permits shall be submitted to the Board accompanied by additional documents as specified below:

1. Name and address of the legal owner of the land in question

2. Name and address of petitioner, if different.

3. Names and addresses of all owners of property within five hundred feet (500 ft.) of the land.

4. An accurate description of the land from which the earth material is to be removed.
5. A full statement as to the purposes of the earth removal.
6. A plan in ten (10) copies prepared by a registered engineer or land surveyor, showing lot lines, tract boundaries, adjacent streets and roads, the original topography by two-foot contours and the proposed final contours after the completion of operation at two-foot intervals.

Within ten days after receipt of the application for the special permit for the removal of earth material, the Board shall transmit a copy to the Planning Board, Conservation Commission, Historical Commission and the Building Inspector, together with a copy of the plan, which shall be required. The above-mentioned boards, may at their discretion, investigate the matter and report their recommendations to the Board.

A public hearing will be held by the Board. The public hearing may be held prior to receipt of the recommendation from the above four Boards, but no decision shall be made by the Board until after the receipt of such recommendations from the above four Boards or until the lapse of thirty days from the date of the filing of the application with the Board.

### **6.6.3 Earth Removal General Requirements**

1. A Special permit granted hereunder by the Board shall impose reasonable conditions designed to safeguard the neighborhood and the Town, and shall include specific conditions pertaining but not limited to any or all of the following conditions:

- (a) Method of removal
- (b) The type and location of temporary structures;
- (c) The hours of operation;
- (d) Rules for transporting the material through the Town;
- (e) The area and depth of excavation;
- (f) The distance of excavation to street and lot lines;
- (g) The steepness of slopes excavated;
- (h) Re-establishment of ground levels and grades;
- (i) Provision for temporary and permanent drainage;
- (j) Disposition of boulders and tree stumps;

- (k) Fencing and signs necessary for public safety;
  - (l) Stockpiling and replacement with loam or topsoil of four inches (4") or to pre-existing depth and topsoil condition, whichever is greater, over the area of removal within a specified time period.
  - (m) Planting of the area to suitable cover, including trees on soil suitable fitted, limed and fertilized
  - (n) Provisions for proper access and egress to and from site to highway or local streets
  - (o) Opaque fencing and/or vegetated buffer strip of suitable height to collect dust and to mitigate visual impact; for more information see Section 5.1.9 and 5.1.10 of this Bylaw.
  - (p) Inspection of the premises at any time by the Board or its representatives;
  - (q) In non-industrial districts, a portable stone crusher use is allowed for a duration of not more than 8 weeks in the calendar year.
  - (r) Except in the industrial district, no stone crusher nor other machinery not required for actual removal of the material shall be used, unless permitted by the Board.
2. The Board shall require, as a condition to the granting of a special permit for the removal of earth material, that the applicant for the permit furnish cash, certified check, surety bond or other security in a sum sufficient to insure compliance with the conditions stipulated in each permit.
3. A special permit granted shall be issued for a period of not more than one (1) year. Such permit may be renewed or re-issued with modifications of conditions by the Board without a public hearing.
4. Upon petition of the permit holder or abutters or upon its own initiative, the Board shall hold a public hearing to re-issue or modify a special permit for removal of earth material or to order suspension or revocation of such permit, if the Board finds any violation of conditions stipulated in such special permit. The suspension or revocation of the special permit shall not relieve the permit holder of his obligations and thereunder except at the discretion of the Board.
5. When the removal is in conjunction with continued operation of a sand or gravel pit in lawful operation on the effective date of this by-law and until the operation is abandoned for a period of twelve (12) consecutive months, provided that in the course of operation:

(a) The depth of excavation is not increased below the grade of the lowest point excavated on the date this By-law is adopted.

(b) The total area of excavation is not increased by more than 10% over its area on such date.

(c) The amount of material removed per day does not exceed the maximum removed during any daily operation during the twelve months preceding the effective date of this by-law.

(d) The conditions stated herein under which a special permit is not required shall not include removal of earth materials from the premises when major topographical changes or soil stripping or loam stripping activities are involved.

**6.6.4 Earth Removal Exemptions.** Under no conditions will an exemption be granted for the removal of over 200 cubic yards of materials per acre in any five- (5) year period. No special permit is required for the removal of earth, which is less than 200 cubic yards per acre for the following:

1. When the removal is not more than fifteen cubic yards (aggregate) in one year from one parcel of land.
2. When the removal is at the site of, incidental to, and in connection with the construction and alteration of a building or structure for which a building permit has been issued and to the installation of walks, driveways and similar appurtenances to said building or structure.
3. When the removal is incidental to the transfer of earth material from one part of a parcel of land to another part of the same parcel or to an adjacent parcel in the same ownership for the improvement of the property, provided that the area involved is suitably graded and planted thereafter.

**6.6.5 Procedure for Filling of Land.** The filling of land in Monson shall be done only after the Board issues a special permit. All applications for special use permits shall be submitted to the Board accompanied by the following specific information:

1. Name and address of the legal owner of the land;
2. Name and address of the petitioner, if different;
3. Name and addresses of all owners of property within five hundred feet (500 ft.) of the land;
4. An accurate description of the land and the location of the proposed filling;
5. A full statement as to the purposes of the filling of land;

6. A plan in three (3) copies, prepared by a registered engineer or land surveyor, showing lot lines, tract boundaries, adjacent streets and roads, the original topography by two-foot contours and the proposed final contours after the completion of operation at two-foot intervals;
7. The estimated quantity of material to be added and topsoil to be stripped and replaced;
8. The proposed form of bond to be used.

Within ten days after receipt of the application for the special permit for the removal of earth material, the Board shall transmit a copy to the Planning Board, Conservation Commission, Historical Commission and the Building inspector, together with a copy of the plan, which shall be required.

The above-mentioned Boards, may at their discretion, investigate the matter and report their recommendations to the Board.

A public hearing will be held by the Board. The public hearing may be held prior to receipt of the recommendations from the above four boards, but no decision shall be made by the board until after the receipt of such recommendations from the above three Boards or until the lapse of thirty days from the date of filing of the application with the Board.

#### **6.6.6 Filling of Land General Requirements**

1. The filling of land that raises the existing grade by an average of two feet or more of any area of land 2,500 square feet or more, or raises the existing grade by an average of five feet or more of any area of land 1,000 square feet or more shall require a Special Permit that is subject to at least the following conditions.
  - (a) No slope created by the filling operation shall be finished at a grade in excess of the natural angle of repose of the materials.
  - (b) All filled areas shall, upon completion of the operation, be covered with not less than four inches loam, brought to the finish grade and seeded in a satisfactory manner.
  - (c) No permit for the filling of land shall be issued if such filling will: (a) endanger public health or safety; or (b) constitute a nuisance; or (c) result in detriment to the normal use of adjacent property; or (d) cause significant erosion or sedimentation due to improper drainage design or management; or (e) result in traffic hazards in residential areas or excessive congestion or physical damage on public ways.
2. A special permit granted hereunder by the Board shall impose reasonable conditions designed to safeguard the neighborhood and the Town, and shall include specific conditions pertaining but not limited to any or all of the following conditions:

- (a) Method of filling
- (b) The type and location of temporary structures
- (c) The hours of operation
- (d) Rules for transporting the material through the Town
- (e) The area and slope of proposed filled area
- (f) The distance of filling operation to street and lot lines
- (g) The steepness of finished slopes
- (h) Provision for temporary and permanent drainage
- (i) Fencing and signs necessary for public safety
- (j) Stockpiling and replacement of loam or topsoil of four inches (4") over the fill area over a specified period of time
- (k) Planting of the area to suitable cover, including trees on soil suitably fitted, limed and fertilized
- (l) Provisions for proper access and egress to and from site to highway or local streets
- (m) Opaque fencing and/or vegetated buffer strip of suitable height to collect dust and to mitigate visual impact. For more information, see section 5.1.9 and 5.1.10 of this Bylaw.
- (n) Inspection of the premises at any time by the Board or its representative.

3. The Board shall require, as a condition to the granting of a special permit for the filling of land, that the applicant for the permit furnish cash, certified check, surety bond or other security in a sum sufficient to insure compliance with the conditions stipulated in each permit.

4. A special permit granted shall be issued for a period of not more than one (1) year. Such permit may be renewed or re-issued with modifications of conditions by the Board without a public hearing.

5. Upon petition of the permit holder or abutters or upon its own initiative, the Board shall hold a public hearing to reissue or modify a special permit for the filling of land or to order suspension or revocation of such permit, if the board finds any violation of



conditions stipulated in such permit. The suspension or revocation of the special permit shall not relieve the permit holder of his obligations and thereunder except at the discretion of the Board.

**6.6.7 Filling of Land Exemptions.** No special permit shall be required for the following:

1. Filling of land in conjunction with a development that requires a special permit. Any such filling, however, shall be approved as part of the Special Permit required for the development and shall meet the conditions of Sections 6.6.5 and 6.6.6 of this Bylaw.
2. Filling of land in conjunction with a development that requires definitive subdivision plan approval. Any such filling of land, however, shall be approved as part of the Subdivision Plan and shall meet the conditions of Sections 6.6.5 and 6.6.6 of this Bylaw.
3. Filling of land in conjunction with work by a Town of Monson Department. The Monson Conservation Commission, Zoning Enforcement Officer and Board of Health, however, shall approve any such filling of land, in writing, and the approval notice posted at the site.
4. Filling of land in conjunction with the installation of an approved Title V septic system, provided the fill is not placed closer than (10) ten feet to the side and rear property lines and does not increase the stormwater run off from the property. Applicant to provide a plan prepared by a registered engineer, showing compliance with these provisions.
5. Filling of land in conjunction with the construction and landscaping of a single family home, provided the grade is not raised by more than (4) four feet and the fill is not placed closer than (10) ten feet to the side and rear property lines and does not increase the stormwater run off from the property. Applicant to provide a plan prepared by a registered engineer, showing compliance with these provisions.

**6.7 ACCESSORY APARTMENTS**

An accessory apartment unit shall be permitted in the RR and RV districts only upon issuance of a Special Permit from the Zoning Board of Appeals as specified in Section 7.3 of this Bylaw, and in accordance with the additional requirements specified herein.

**6.7.1 General Description.** An accessory apartment shall mean a separate housekeeping unit, complete with its own sleeping, cooking and sanitary facilities, that is substantially contained within the structure of a single-family dwelling, but functions as a separate unit.

**6.7.2 Additional General Requirements.** The following standards shall be used as additional requirements in the special permit process for all accessory apartments:

1. One apartment per single-family house is allowed.

2. The lot size and frontage of the single-family house must meet the requirements of the zoning district.
3. There shall not be more than 700 square feet of gross floor area or 35% total square foot increase in the accessory apartment whichever is larger.
4. The appearance of the overall structure shall retain the appearance of a single-family house.
5. The owner of the structure must occupy one of the two-dwelling units within the structure.
6. There must be adequate, on-site parking for each dwelling unit.

**6.7.3 Application Procedure.** The procedure for the submission and approval of a Special Permit for an Accessory Apartment in an Owner-Occupied, Single-Family Dwelling shall be the same as prescribed in the Rules and Regulations of the Board of Appeals except it shall include a notarized letter of application from the owner(s) stating that he/they will occupy one of the dwelling units on the premises.

## **6.8 DWELLING CONVERSION.**

The Board of Appeals may issue a special permit for an exception for the use of an existing one-family dwelling for not more than four (4) families, under the following conditions:

1. Such action will not tend to deteriorate the standards and character of the neighborhood.
2. The existing dwelling is suitable and capable of being altered for the proper, safe and convenient use, for not more than four families, each containing the minimum habitable area, all without materially altering the exterior appearance.
  - (a) The Board shall require adequate plans, setting forth the changes and improvements to be made.
  - (b) The Board shall place such reasonable restrictions and conditions upon the granted exception as they deem necessary under the purpose of the Zoning Bylaws.

## **6.9 SWIMMING POOL BYLAW**

A Swimming Pool, including appurtenant structures, provided such pool is used only by the residents of the premises and guests, and that no portion of the water area be closer than twenty

(20) feet to the side or rear lot line, and inground pools be securely fenced to a height of not less than four (4) feet.

## **6.10 TRAILERS**

**6.10.1 Trailer Storage.** A travel or camping trailer owned by the resident of the property may be stored thereon in the rear or side of the principal dwelling, and not within the required front yard, but such travel or camping trailer shall not be used for living purposes.

**6.10.2 Trailer Replacement.** An existing trailer or mobile home on the owner's land may be replaced by a trailer or mobile home of equal or greater value and size subject to the residential district yard restrictions, provided the mobile home meets the requirements of the Massachusetts Building Code.

**6.10.3 Emergency Use of Trailers.** The owner or occupier of a residence which has been destroyed by fire or natural disaster may place a trailer or mobile home on the site of such residence and may, by right, reside in such trailer or mobile home for a period not to exceed twelve months while the residence is being rebuilt. Any such trailer or mobile home shall be subject to the provisions of the State Sanitary Code.

## **6.11 COMMERCIAL RECREATION DEVELOPMENT BYLAW**

**6.11.1 Permitted Uses.** Commercial Recreation Campsites shall include only the following permitted uses and approved combination thereof:

1. Outdoor athletic activities, including facilities for skating, skiing, sledding, swimming, squash and tennis and related activities.
2. A golf course of not less than nine holes as a principal recreational use, and a par-three golf course, or putting greens and driving range accessory to a major recreational activity.
3. Riding academy with trails as a principal use, and the keeping and boarding of horses for riding, instruction and exhibition.
4. The rental of campsites as a part of commercial recreation operation subject to the Standards and Regulations of Section 6.11.5.
5. Activities similar to those listed above, that are commonly provided by such organizations as day camps, swimming and tennis clubs and other recreational enterprises and that are listed in the application and shown on the site plan, may be approved by the Zoning Board of Appeals subject to such additional safeguards as the Zoning Board of Appeals may require.

6. Except as above, residential use shall be limited to existing dwellings and one additional single-family dwelling for the owner or caretaker of the property only.

7. Accessory uses and structures customarily incidental to a permitted use.

#### **6.11.2 Application Procedure**

1. Commercial Recreational Development shall be permitted only upon issuance of a Special Permit with Site Plan Approval from the Zoning Board of Appeals as specified in Sections 7.3 and 7.4 of this bylaw and in accordance with the additional requirements specified here.

2. The applicant shall submit five (5) copies of the Commercial Recreational Development Plan to the Zoning Board of Appeals. In addition, the applicant shall also file one copy of the Plan with the Board of Health and the Conservation Commission. The Zoning Board of Appeals may decide to forward said plan to other Town agencies and/or departments for their review.

3. The applicant shall submit two (2) copies of the Commercial Recreation Development Site plan to the Planning Board for review. The Planning Board shall forward its comments in writing to the Zoning Board of Appeals within twenty-one (21) days of receipt.

4. To promote better communication and to avoid misunderstanding, applicants are encouraged to submit a Preliminary Plan for review by the Zoning Board of Appeals prior to the application of a Special Permit. The Preliminary Plan should conform to these regulations as well as the Standards for Site Plan Review outlined in Section 7.4 - such Preliminary Plan shall comply with the Town's Subdivision Control Regulations - as they may apply.

**6.11.3 Fees.** If the applicant chooses to submit a Preliminary Plan to the Zoning Board of Appeals for review, the Commercial Recreation Development Preliminary Plan shall be accompanied by an application fee of fifty dollars (\$50) plus two dollars (\$2) for each acre of land in the Plan.

The Commercial Recreation Development Definitive Plan shall be accompanied by a one-time application of fifty dollars (\$50) plus five dollars (\$5) for each acre of land contained in the Plan if a Preliminary Plan was filed or an application fee of two hundred dollars (\$200) plus fifteen dollars (\$15) for each acre of land contained if a Preliminary Plan was not filed.

If, in the judgement of the Board, consulting services are necessary or appropriate, the applicant shall, prior to the issuance of the Special Permit, pay for any such services. All consultants shall be selected by the Board.

**6.11.4 Additional General Requirements.** The following standards shall be used as additional requirements to the Special Permit/Site Plan approval process for Commercial Recreational Development:

1. The total area of the site for the Commercial Recreation Development shall be at least fifty (50) acres.
2. Commercial Recreation Development shall be separated from adjacent properties by buffer strips consisting of trees and/or plantings sufficient to minimize the visual and noise impacts of the campground. The buffer strip can only be used as a buffer strip, not as roads, parking, or for any other activity. Commercial Recreation Development must provide a minimum one hundred fifty foot (150) buffer strip to separate the recreational activities from the abutting properties.
3. No driveway for entrance and exit shall be located within one hundred fifty (150) feet of any side or rear property line. No entrance or exit from a campsite shall be allowed to move through a residential development.
4. The number of sites for tents, campers or travel trailers shall not exceed ten (10) per acre, exclusive of all public open space and wetlands.
5. The site plan shall identify the location and extent of all wetlands on the site as determined by the Conservation Commission under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40.
6. Parking areas shall not be located within one hundred fifty (150) feet from any other property line and shall be screened from public ways and adjacent or abutting properties by trees and/or plantings. Parking spaces adequate to accommodate, under normal conditions, the vehicles of employees, members, patrons, and persons using the facilities shall be provided as determined by the Zoning Board of Appeals. No individual parking area shall contain more than twenty (20) spaces and shall be separated by adequate buffers.
7. Roads, driveways and access ways shall have sufficient width, suitable grades, adequate storm drainage, and adequate construction to provide for the needs of vehicular traffic generated by the site. All roads shall provide free movement for fire equipment.
8. Lighting shall be so shielded as to cast no light upon adjacent property or public ways. Driveways and parking areas shall be illuminated only by shielded lights not higher than fifteen (15) feet.
9. Signs must conform to the rules and regulations of signs in Section 5.3 of these Bylaws.
10. Any commercial use of land or structure for recreational purposes shall be subject to the granting of an appropriate license by the Monson Board of Health under the

provisions of Section 32A to 32D of Chapter 140 of the General Laws. No Special Permit/site plan approval shall be issued by the Zoning Board of Appeals unless and until the Board of Health has approved those aspects of the development, which come under its jurisdiction.

11. A minimum of 40% of the total land area in a campground shall be reserved as open space.

12. The Planning Board may prescribe, from time to time, rules and regulations to amend the standards and conditions set forth in these zoning regulations for Commercial Recreation Development, provided the rules and regulations are not inconsistent with the Zoning Bylaws and Chapter 40A of the General Laws of the Commonwealth of Massachusetts.

#### **6.11.5 Additional Utility Requirements**

1. For units to be served by on-site waste disposal systems, the applicant shall submit a septic system design prepared by a certified engineer and approved by the Board of Health and a plan illustrating the location of water supply wells with the Special Permit application. No communal septic system serving the recreation facility shall exceed sewage flow of 2,000 gallons per day. Septic systems shall be placed in the development to maximize the distance between systems and shall be placed within common areas rather than on individual campsites.

2. No Commercial Recreation Development shall be approved unless the applicant can demonstrate to the satisfaction of the Planning Board that the potential for groundwater pollution is no greater from the proposed Commercial Recreation Development than would be expected for a conventional subdivision with single-family houses located on the same parcel. Where necessary, the Planning Board may hire a Professional Engineer to analyze and certify groundwater quality impacts and may charge the applicant for the cost of the analysis.

3. Development of water areas and drinking water supplies and overall distribution of the water system within the area is subject to the regulations and standards established by the Monson Board of Health and the Massachusetts Department of Public Health.

#### **6.11.6 Additional Requirements for Campsites in Commercial Recreation Development**

##### **1. Campsite Dimensions**

(a) There shall be no more than ten (10) campsites per gross acre devoted to such sites, and exclusive of all public open spaces and wetlands.

(b) Each campsite shall not have less than 20-feet of frontage on an access driveway or way connected ultimately to a public street.

## 2. Campsite Utilities

- (a) Potable water supply, sanitary sewage disposal, garbage and waste collection shall be provided in accordance with Monson and Massachusetts Sanitary Codes. No occupancy shall be permitted until approved by the Monson Board of Health.
- (b) A sanitary disposal station shall be located not nearer than 100 feet of any campsite and shall be screened by fences or natural growth. It shall have a hose and water for washdown purposes and suitable drainage for same. All provisions for solid waste disposal will be made by the operator at no expense or other burden to the Town. Where required, a community toilet facility complete with a minimum of one (1) shower stall, two (2) lavatories, and two (2) water closets separated for each sex, shall serve not more than twenty (20) campsites and shall be suitable screened by trees and/or plantings from the campsite.
- (c) The location, materials of construction and storage of fuels for outdoor cooking facilities of any kind shall be subject to the approval of the fire chief, and no outdoor cooking shall be allowed except at approved locations by the fire chief.
- (d) Water and electrical connections may be provided to each campsite. Individual sewage connections may be supplied to campsites, but cannot be used during the period from October 15 to the next following May 15.

## 3. Rental of Campsites

- (a) Campsites may be occupied by a travel trailer, camp trailer, or tent but not any type of permanent building or mobile home.
- (b) Campsites shall not be occupied from November 1 through November 30 and March 15 through April 15.
- (c) The number of campsites in any one commercial recreation area shall not exceed 200 campsites. Trailer storage year round is not permitted, nor may trailers be left on sites, or tents left erected, during periods when not occupied.
- (d) Spaces in campsites may be used only by recreational campers or equivalent facilities classified as short-term vacational housing.
- (e) The definition of a travel trailer or camper shall be: a vehicular, prefabricated, portable structure designed as a temporary dwelling for travel, overnight camping, recreational and vacational uses. Designed for temporary use, such travel trailers or campers are usually in, on, or behind a motor vehicle.
- (f) Sale of lots or long-term lease of right to occupy campsites shall not be permitted.

**6.11.7 Building Permit Requirements.** A building permit for the construction of a Commercial Recreational Development shall not be issued until a special permit and an approved site plan are granted from the Zoning Board of Appeals. Building permits are issued by the Building Inspector or Selectmen. All construction must conform with the standards and regulations of the State Building Code, available from the Building Inspector.

## **6.12 PINBALL MACHINES AND ELECTRONIC GAMES**

Not more; than two (2) pinball machines or electronic games shall be permitted in any restaurant, tavern, club or other business establishment operated for public recreation in any district except by special permit from the Zoning Board of Appeals which shall consider whether the granting of such permit will cause any harm to the abutters, the zoning district in which the applicant is located, or the public welfare, and may impose conditions, safeguards, and limitations on time of use.

## **6.13 MIXED USES**

**6.13.1** Mixed use structures shall be permitted in the Central Commercial and General Commercial districts only upon issuance of a special permit with Site Plan Approval from the Zoning Board of Appeals as specified in Sections 7.3 and 7.4 of this Bylaw, and in accordance with the additional requirements specified herein.

**6.13.2 General Description.** A “Mixed Use” shall mean two or more uses occupying the same structure or lot of this Bylaw, or any subsequent amendment thereto, which does not conform to one or more provisions of the Bylaw.

**6.13.3 Purposes.** The purposes of a mixed-use development are to:

1. Encourage the reuse of surplus or abandoned real estate within the Town Center;
2. Promote a diversity of uses to improve retail, professional and other services available to Monson residents.

**6.13.4 Permitted Uses.** The following uses shall be permitted in a mixed use structure:

1. Residential uses
2. Places of public assembly including libraries, museums, art galleries, craft centers, recreation and community centers, and membership clubs;
3. Only the following business uses - retail establishments selling convenience goods such as food, drugs, and proprietary goods; general merchandise such as dry goods, apparel and accessories, hardware, home furnishings and similar items; personal and consumer service establishments, medical, other professional and business offices including financial, insurance and real estate offices.



### **6.13.5 Additional General Requirements**

1. Applicants for Mixed Use shall follow the Special Permit procedures specified in Section 7.3 and the Site Plan Approval procedures specified in Section 7.4.
2. In cases of mixed occupancy, the regulation for each use shall apply to the portion of the building or land so used.
3. Reduction of requirements when establishing or re-establishing residential use within an existing structure. Where a mixed residential/business use may be located in the CC and GC districts, and where such use is proposed for a structure which is in existence on the date of the adoption of this Bylaw, and which has not been substantially changed since that date, and where such use is proposed for a lot which has not been decreased in size since the date of such adoption, a reduction in certain of the requirements contained in the Table of Dimensional and Density Regulations may be authorized by special permit from the Zoning Board of Appeals and to the additional provisions:
  - (a) A reduction in the minimum lot size requirement may be allowed to the extent that the number of proposed dwelling units shall not exceed that which may be determined by the Board of Appeals as being appropriate (based on floor plans submitted with the application) for the particular building in question, and provided that no individual dwelling unit shall be smaller than six hundred (600) square feet in living space.
  - (b) A relaxation in the requirements dealing with building coverage, floor area ratio, and open space, may be allowed by the Board of Appeals, provided that it finds that the total number of dwelling units will not increase above that which might otherwise be possible.

## **6.14 WIRELESS COMMUNICATIONS FACILITIES REGULATIONS**

The purpose of this subsection of the Zoning By-Law is to establish appropriate siting criteria and standards for wireless communications facilities, to minimize the adverse impact on adjacent properties, to preserve scenic views, to limit the number and height of such facilities, to promote the shared use of existing facilities to reduce the need for new facilities, and to provide maximum wireless coverage as mandated by Section 704 of the Federal Telecommunications Act of 1996, while protecting the historic and residential character of the Town of Monson, the property values of the community and health and safety of citizens.

### **6.14.1 General Use Restrictions**

1. No wireless communications facilities as defined in section 1.7 shall be erected or installed except by Special Permit from the Planning Board, acting as the Special Permit Granting Authority, in accordance with the procedures specified in section 6.14 and section 7.3 as well as such rules and regulations as officially promulgated by the Planning Board.

2. Any proposed modification to an existing wireless communications facility erected or installed by Special Permit from the Planning Board including but not limited to the addition or replacement of cells, antennas or panels shall be subject to these provisions and shall require a new application. The Planning Board may waive, at its discretion, any application requirements for such modifications.

3. Wireless communications facilities in existence at the time of adoption of these Regulations including guyed towers, lattice towers and utility towers may be reconstructed, altered, extended or replaced on the same site by Special Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or replacement will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts.

**6.14.2 Design Guidelines.** The following guidelines shall be used when preparing plans for the siting and construction of wireless communications facilities.

1. To the extent feasible, wireless communications facilities shall be located on existing structures, including but not limited to buildings, water towers, telecommunications towers, utility poles and related facilities, provided that such installation preserves the character and integrity of those structures. The applicant shall have the burden of proving that there are no feasible existing structures upon which to locate.

2. To the extent feasible, wireless communications facilities shall be located so as to be as visually unobtrusive as possible from all views to the greatest extent possible. An applicant proposing a wireless communications facility shall demonstrate to the satisfaction of the Planning Board that the applicant has endeavored to minimize the visual and aesthetic impacts of the proposed facility on residential abutters; and, that the facility must be located at the proposed site due to technical, topographical or other unique circumstances.

3. To the extent feasible, wireless communications facilities shall be designed to accommodate the maximum number of users technologically practical. The intent of this requirement is to reduce the number of towers, which will be required within the community. New towers shall be considered only upon a finding by the Planning Board that existing or approved towers cannot adequately fulfill the applicant's service requirements or accommodate the wireless communications equipment planned for the proposed tower.

4. All building-mounted facilities shall be designed and located so to appear as an integral part of the existing architecture of the building. No such facility shall project more than ten feet above the existing roof line of the building, or more than ten feet above the top of the existing structure upon which it is mounted, or more than five feet

out from the plane of the existing wall or facade to which it is attached, provided that such projections do not otherwise violate existing yard dimensions or setback requirements.

5. Only free standing monopoles, with associated antennas and panels are allowed in new locations. Lattice style towers or any tower requiring guy wires for support are not allowed unless pre-existing on the location.

6. No new wireless communications tower shall be located closer than two miles to any other existing tower location in Monson to the maximum extent feasible.

7. All wireless communications towers shall be designed to be constructed at minimum height necessary to accommodate the anticipated and future use. In residential zoning districts, wireless communications facilities shall not exceed one hundred (100) feet in height as measured from ground level at the base of the tower.

8. All wireless communications towers shall be pre-engineered to fail at a pre-determined height and “fold in half” in the event of a catastrophic failure.

9. The setback of a wireless communications tower from the lot line or street line of the lot on which it is located shall be at least equal to 150% of the tower’s height. Further, within the residential districts (RV & RR) the tower shall be located a minimum of five hundred (500) feet from existing lot lines.

10. All wireless communications facilities shall be painted, colored, and/or constructed of materials that minimize the visual impact of the wireless communications facilities on adjacent abutters, residential neighbors and other areas of Town; and owners of wireless communications facilities shall endeavor to install said facilities in a manner that blends them into the structure, building, tower and/or landscape where they are located. The Planning Board may impose reasonable conditions to ensure this result including but are not limited to structural design, painting, lighting, and landscaping standards.

11. Fencing shall be provided to control unauthorized access by the public to wireless communications facilities and shall be compatible with the scenic character of the Town and of abutting properties and shall not be of barbed or razor wire unless completely blocked from view by shrubs or other landscaping. A landscape buffer of evergreen shrubs or tree plantings shall be provided on the outside of the fenced area. All landscape plantings must be continually maintained.

12. Lighting shall be limited to the lighting required for emergency and for FAA compliance. All lighting shall be shielded to prevent undue impact on surrounding properties.

13. Accessory structures housing support equipment for towers shall not exceed four hundred square feet in area and fifteen feet in height. Design of accessory structures shall be in keeping with the character of the neighborhood.

14. Signs shall be restricted to warning/no-trespassing signs and an identification sign displaying the FCC registration number of the facility, the owner/operator, and an emergency telephone number where the owner/operator can be reached on a twenty-four (24) hour basis. All signs shall comply with the requirements of the Monson Zoning Bylaw.

15. To the extent feasible, all network interconnections from the communications site shall be via landlines.

16. Existing on-site vegetation shall be preserved to the maximum extent practicable. Clearing of land shall be performed in a manner, which will maximize preservation of natural beauty and conservation of natural resources.

**6.14.3 Submission Requirements.** The applicant for a Wireless Communications Facilities special permit shall submit to the Planning Board a written application on the prescribed form containing all of the following information:

1. A site plan in accordance with the requirements of this section and section 7.4, which shall show all lot lines, the exact location of the proposed facilities, streets, landscape features, residential dwellings all buildings within five (5) hundred feet of the facility.

2. A color photograph or rendition of the proposed wireless communications facilities including, but not limited to, the proposed tower with its antenna and/or panels. A rendition shall also be prepared illustrating a view of the facility from the nearest street or streets.

3. A technical report prepared by a professional engineer containing; (1) a description of the proposed wireless communications facilities including the technical, economic and other reasons for the proposed location, height and design; (2) a survey of all pre-existing structures, buildings or towers which are capable of supporting the equipment necessary to provide the intended service, and a technical report which demonstrates why any such structure, building or tower cannot be used by the applicant; (3) a description of the capacity of the proposed facility including the number and type of panels, antenna and/or transmitter receivers that it can accommodate and the basis for these calculations; (4) a description of the special design features utilized to minimize the visual impact of the proposed wireless communications facilities, and (5) certification of compliance with all applicable stated and federal standards.

4. A landscape plan showing the proposed site before and after development including topography and screening proposed to protect abutters.

5. Within thirty (30) days after filing the applications for any new tower or extension in height thereto, the applicant shall arrange to fly a balloon at the maximum height of the proposed installation on a weekend day between the hours of noon and 3 P.M. The balloon shall be of size and color that can be seen from every direction for a distance of

one (1) mile. The date and location of the flights shall be advertised at least fourteen (14) days, but not more than twenty-one (21) days, before the flights in at least two different issues of a newspaper with a general circulation in the Town of Monson.

#### **6.14.4 Cessation of Use and Obsolescence**

1. The Building Inspector shall annually require proof of certification demonstrating compliance with the standards of the Federal Communications Commission, Federal Aviation Administration, and the American National Standards Institute and required maintenance.
2. Providers of wireless Communications service shall report to the Building Inspector, any cessation in the use or operation of any wireless communications facility that exceeds thirty (30) days, and such facilities shall be dismantled and removed at the owner's expense within one (1) year of cessation of use or operation.
3. Prior to the issuance of a building permit for a Wireless Communications Tower, the applicant shall post with the Town a bond in the amount set by the Planning Board. The amount shall be suitable to cover demolition, removal and disposal of the tower and its accessories in the event the Building Inspector condemns the tower or any accessory part thereto, or deems it unused for more than one (1) year. The Building Inspector shall give the tower's owner forty-five (45) days written notice by registered mail before demolition commences. All demolition and removal costs will be billed to the tower's owner and any unpaid amounts will become an encumbrance on the property.
4. The applicant shall obtain and record in the appropriate registry of deeds a limited right of access granted to the Town of Monson by the lessor/landowner giving the Town the right to enter the property and remove the tower and accompanying structures in the event that the use of the tower as a wireless facility is abandoned.

#### **6.15 PLANNED UNIT RESIDENTIAL DEVELOPMENT (PURD)**

The Planning Board, acting as the Special Permit Granting Authority, may authorize a Planned Unit Residential Development (PURD) as defined by Section 1.2 by special permit with site plan approval in conformance with the procedures specified in Section 7.3. Such PURD shall be subject to rules; regulations and criteria as officially promulgated by the Planning Board.

- 6.15.1 Purpose** It is the purpose of this section to allow for greater variety and flexibility in the development of housing types for persons of age 55 and older and to facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner while at the same time conserving important natural site features and permanently preserving open space.

To provide housing for people 55+. All occupants must be age 55 or older. This will minimize the potential impacts in terms of noise, traffic,

parking, environmental impacts and related issues of such multifamily housing on surrounding properties.

### **6.15.2 Application**

1. The applicant for a PURD special permit shall submit to the Planning Board a written application on the prescribed form containing all the information required hereafter including the following materials:

- (a) A Development Statement listing the development team, setting forth the development concept, including in tabular form the number of units, type, size (number of bedrooms, amount of living space, gross floor area), ground coverage and summary showing the area of residential development and common open space as percentage of the total area.
- (b) A Development Site Plan of the entire tract in accordance with the requirements of this section and Section 7.4 and meeting, to the extent applicable and with modifications approved by the Planning Board, the requirements set forth for a definitive plan in the Monson Subdivision Regulations.
- (c) Architectural rendering of the site plans and typical structures including floor plans and elevations.
- (d) A traffic study of the area as it may be affected by the proposed development, including present and anticipated traffic counts, flow patterns, and capacity analysis of present and proposed intersections and entrances serving the development. If appropriate, internal traffic patterns should also be shown.
- (e) An engineering report regarding the adequacy of sewage disposal, water supply and storm water drainage as the proposed design relates to existing utilities of the Town and Title V with Board of Health approval.
- (f) A project description including anticipated number of residents in each residential unit; unit selling prices; pre- and post-construction management methods including drafts of supporting documents and contracts; construction schedule and phasing schedule.

2. Said application shall contain sufficient information so that the Planning Board can determine the applicability of said application for the following items:

- (a) Is consistent with the Master Plan of Development of the Town;
- (b) Preserves and protects the character of the Town and especially the immediate neighborhood, giving due consideration to such features as public safety, including traffic control and traffic impact upon surrounding roads; development of adequate recreational facilities for the use of the residents of said

proposal and/or the community; adequate fire protection; public health including sewerage disposal, drainage and water supply; and the compatibility of the size, location, and landscaping of said project with the adjacent neighborhood and the Town;

(c) Minimizes potential adverse environmental impacts upon the Town;

(d) Conforms to the specific provisions of this bylaw, including the performance standards of this section.

3. Said special permit shall not be issued unless the Planning Board affirmatively determines that each of the above listed criteria is met by said applicant.

**6.15.3 Use Regulations: The following uses shall be permitted in a PURD:**

1. One family detached dwellings;
2. Two family detached dwelling;
3. Townhouses;
4. Multiple dwellings not exceeding four (4) units per building;
5. Recreational uses and community facilities such as parks, gardens, swimming pools, tennis courts, clubhouses and community buildings;
6. Accessory uses customarily incidental and subordinate to the principal uses listed above, but expressly excluding any commercial or retail enterprise.

**6.15.4 Dimensional Regulations – Property for PURD use shall comply with the following dimensional requirements:**

1. Minimum Parcel Size. The total parcel shall have a minimum area of ten (10) acres. No more than 50% shall be wetland or encumbered by easements or be unusable.
2. Minimum Parcel Frontage. The total parcel shall have a minimum frontage on a public way of at least fifty (50) feet. There shall be no frontage requirements within the PURD.
3. Front, Side and Rear Yards. The minimum front yard (setback) shall be two (200) hundred feet, the side yard and rear yard requirements shall be eighty (80) feet and each setback requirement shall pertain only to the periphery of the PURD.
4. Buffer Area. A landscaped buffer strip not less than thirty (30) feet wide, as described in Section 6.5 shall be provided along the perimeter of the property. Additional buffering

may be required in sensitive areas at the discretion of the Planning Board. The Planning Board may modify or waive the buffering requirement where variations in topography, natural features, or compatible land uses obviate the need for such a buffer.

#### **6.15.5 Density Regulations:**

The maximum number of dwelling units permitted within the PURD is one (1) dwelling unit per 20,000 square feet of net developable area in the R.V. District, and one (1) dwelling unit per 40,000 square feet of net developable area in the R.R. District.

#### **6.15.6 Net Developable Area**

The net developable area of a parcel for PURD development shall be the total area of all lots shown to be developable under the Town of Monson Subdivision Regulations and zoning, and shall be calculated by the following procedure:

- (a) Where lots are not to be served by Town of Monson sewage collection system, percolation tests, in conformity with Title V, 310 CMR 15.00-15.99 as amended, shall be conducted under the supervision of the Board of Health, for all lots in the total acreage of the property which would be developed in a standard subdivision layout and using 40,000 square feet per lot. The area of those lots which is determined to be not suitable for on-site sewage disposal shall be subtracted from the developable area of the total parcel.
- (b) Under the supervision of the Conservation Commission, the total acreage of all wetlands, in accordance with the Wetlands Protection Act, M.L.G. Chapter 131, Section 40, shall be identified and their area subtracted from the developable area of the total parcel.

#### **6.15.7 Building Requirements**

1. Building Character: Buildings shall be in harmony with the prevailing character and scale of buildings in the neighborhood and the town through the use of appropriate building materials, form and siting shall be used to provide visual interest and avoid monotony. Proposed buildings shall relate harmoniously to each other with adequate light, air, circulation and separation between buildings.

2. Building Location. Building location and orientation shall reflect:

- (a) Relationship to the street line and to other buildings in the development if in close proximity, in order to protect privacy and create visual coherence;
- (b) Views, solar access, and access to common open space, in order to enhance occupant's interests;



(c) Organization of large developments into recognizable sub-areas in order to provide scale and identity;

(d) Avoidance of major topographic change and destruction of significant natural site features including removal of native trees and vegetation in order to preserve and protect the environment; Reduction of visual intrusion into abutting properties in order to protect existing character. To the extent practicable, the multifamily units of the PURD shall be developed more towards the interior rather than the periphery of the tract so that the one family and two family detached residences, if any, border adjacent properties, acting as a buffer between the development and pre-existing one family neighborhoods. The development shall be integrated into the existing terrain and surrounding landscape, and shall be designed to protect abutting properties and community amenities. Building sites shall to the extent feasible: (1) minimize use of wetlands, steep slopes, floodplains, hilltops; (2) minimize obstruction of scenic views from publicly accessible locations; (3) preserve unique natural or historical features; (4) minimize tree, vegetation and soil removal and grade changes; and (5) maximize open space retention and (6) screen objectionable features from neighboring properties and roadways.

More than one structure may be placed on a lot, but no residential structures shall be placed closer to each other than ten (10) feet and must be visually separated by trees and plantings. In addition, each dwelling must be provided with access, drainage and utilities functionally equivalent to that provided under the Planning Board's Subdivision Rules and Regulations.

3. Maximum Building Height. The maximum height of structures shall be two (2) stories and thirty-five (35) feet above the ground.

4. Maximum Number of Bedrooms. The maximum number of bedrooms or rooms used primarily for sleeping purposes per dwelling unit shall be two (2).

#### **6.15.8 Utilities**

1. Each dwelling in a PURD shall be provided with access, drainage and utilities that are functionally equivalent to that provided under the Planning Board's Subdivision Regulations. All utilities shall be placed underground.

2. All structures which require plumbing shall be connected to a private well or public water supply, if available, and where units are to be served with an on site sewage disposal facility, shall meet the requirements of Title V, and the Subdivision regulations and have Board of Health approval.

#### **6.15.9 Parking and Circulation Requirements**

1. There shall be an adequate, safe, and convenient arrangement of pedestrian circulation, roadways, driveways and parking.

2. Vehicular access to the PURD shall be provided from an existing public way, which in the opinion of the Planning Board is adequate to service the proposed development. As a matter of public safety, an alternate emergency access may be required.
3. Roads within the PURD shall be privately owned and maintained and shall be designed with sufficient width, suitable grade and adequate construction to safely provide for the needs of vehicular traffic generated by the development. Access roads shall be designed and constructed according to the requirements of the Monson Subdivision Regulations or as otherwise modified by the Planning Board.
4. Garages or off-street parking spaces, or a combination thereof, shall be provided for all occupants, employees, and visitors, and shall be not less than two (2) spaces per dwelling unit. Storage of vehicles other than passenger cars and light trucks intended for passenger use shall be allowed only with specific Planning Board approval.
5. A parking area for recreational vehicles shall be established with as a minimum one space for every two dwelling units, each space shall be as a minimum 12 feet wide by 40 feet long. The parking area in the PURD shall be so located as not to be seen from abutting property. Screening from abutting property may be accomplished by housing the recreational vehicles in buildings, by natural or constructed embankments, by vegetation or any combination thereof.
6. Where the length of the dead end access is greater than 750 feet, a boulevard shall be constructed, with two travel paved ways each 18 feet wide with a 12-foot wide grassed strip separating each paved way.
7. Access to existing public way maintained by the town shall have a 10-foot landscaped buffer each side.

#### **6.15.10 Landscaping Requirements**

1. A coordinated landscape design for the entire project area, including landscaping of structures, parking areas, driveways and walkways, and buffer strips, shall be submitted for approval by the Planning Board.
2. Wherever possible, existing trees and vegetative cover shall be conserved and integrated into the landscape design.
3. Proper maintenance of the landscaping, including the buffer strip, shall be the responsibility of the owner, and shall be a condition of conformance with the Zoning bylaw.
4. No building shall be floodlit. Lighting for drives; parking areas, walkways and entranceways shall be in accordance with Section 5.3.2.

#### **6.15.11 Common Open Space Requirements**

1. All land within the PURD which is not covered by buildings, roads, driveways, parking areas or other development, or which is not set aside as private yards, patios or gardens for the residents, shall be common open space. The areas of the common open space shall equal at least twenty five percent (25%) of the total area of the PURD tract. Such land shall have a shape, dimension, character and location suitable to assure its use for park, recreation, conservation, or agricultural purposes by all the residents of the development. At least 70% of the common open space shall be retained in contiguous areas, unless approved by the Planning Board.

2. Suitable and usable outdoor recreational area or areas shall be provided for the use of tenants. At least 2,000 square feet per dwelling unit must be usable open space for active and passive recreation. Such space shall not include wetlands as determined by the Conservation Commission. Usable open space shall be defined to include land for community gardens, hiking/jogging paths, tennis courts, swimming pools, or similar facilities. Structures or buildings accessory to recreation, conservation or agricultural uses may be erected but shall not exceed two percent (2%) coverage of the common open land.

3. Further subdivision of common open land or its use for other recreation, conservation, or agriculture, except for easements for underground utilities shall be prohibited. Provision shall be made so that the common open space shall be owned in common and readily accessible to the owners and residents of all units in the development, or by membership corporation, trust or association whose members are the owners and residents of the units, or otherwise as the Board may direct. In all cases, the common open space shall be subject to a perpetual restriction running to or enforceable by the Town, which shall be recorded in respect to such land. Such restriction shall be in such form and substance as the Board shall prescribe and may contain such additional restrictions on development and the use of common open space as the Planning Board may deem appropriate.

#### **6.15.12 Community Association**

1. An owners' association shall be established, requiring membership of each lot or unit owner in the PURD. The association shall be responsible for the permanent maintenance of communal water, sewage, recreational and thoroughfare facilities. An association agreement or covenant shall be submitted with the Special Permit application guaranteeing the continuing maintenance expenses. Such agreement shall be subject to the review and approval of Town Counsel and the Planning Board as part of the Special Permit, and shall be recorded in the Hampden County Registry of Deeds.

2. Such agreements or covenants shall provide that in the event that the association fails to maintain the common facilities in reasonable order and condition in accordance with the agreement, the Town may, after notice to the association and public hearing, enter upon such land and maintain it in order to preserve the taxable value of the properties within the development and to prevent the common land from becoming a public

nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development.

#### **6.15.13 Project identification**

1. As a condition of its approval, the Planning Board may permit a sign showing the project name to be permanently affixed at each entrance to the development. Each sign shall be of a size and design to be approved by the Planning Board provided that no such sign shall exceed twenty (20) square feet in size.
2. All streets shall be posted with standard street signs and all street names shall be approved by the Planning Board. Dwelling Units shall be assigned street numbers as assigned by the Assessors Office.

#### **6.15.14 Enforcement**

1. As a condition of its approval, the Planning Board may establish time limits for any development or phases thereof.
2. Before any building permits are issued for building in a given phase, the developer shall be required to provide the Town with performance security in a form and amount satisfactory to the Planning Board to guarantee the construction of required site improvements.

### **6.16 ADULT ENTERTAINMENT USES**

**616.1 Purpose and Intent.** The purpose of this bylaw is to establish reasonable and uniform regulation of adult entertainment uses within the Town of Monson. The intent of the bylaw is to address and mitigate the negative secondary effects of adult entertainment uses. Studies have documented that the quality of life in a community is degraded by adult entertainment establishments as a result increased levels of crime; depreciation of property values; adverse impacts on the business climate; adverse impacts on neighborhood character; and adverse impacts on public health including noise, litter, unsanitary conditions, traffic and adverse influence on children.

The provisions of this bylaw have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials; and it is not the intent nor effect of this bylaw to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult entertainment to their intended market. It is neither the intent nor the effect of this bylaw to condone or legitimize the distribution of obscene or other illegal matter or materials.

**6.16.2 Definitions.** For purposes herein, “substantial or significant portion of stock” shall mean more than twenty-five (25%) percent of the total display, shelf, rack, table, stand or floor area, utilized for display to rent or sell.

Adult Entertainment Uses shall include the following uses:

1. **Adult Bookstore:** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, periodicals, pictures and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement.
2. **Adult Cabaret:** A nightclub, bar, restaurant, tavern, dance hall, or similar commercial establishment which features:
  - a) Persons who appear in a state of nudity; or
  - b) Live performances which are characterized by an emphasis on depicting anatomical areas specified as less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola, and human genitals in a state of sexual arousal, or relating to sexual conduct or sexual excitement; or
  - c) Motion pictures, films, video cassettes, cable television, slides, DVDs or other photographic reproductions, which are characterized by the depiction or description of anatomical areas, specified as above, or relating to sexual conduct or sexual excitement.
3. **Adult Motion Picture Theater:** An enclosed building or outdoor venue used for public uses, for presenting material (motion pictures, films, cassettes, cable television, slides, DVDs or any other such visual or electronic media) distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement.
4. **Adult Paraphernalia Store:** An establishment having as a substantial or significant portion of its stock in devices, objects, tools, toys, or electronic media which are distinguished or characterized by their association with sexual activity, including sexual intercourse, sexual conduct or sexual excitement.
5. **Adult Video Store:** An establishment having a substantial or significant portion of its stock in trade (for sale or rent) motion pictures, films, video cassettes, DVDs and other film material or similar audio/visual and electronic media which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement.
6. **Establishments Which Display Live Nudity for its Patrons:** An establishment which provides live entertainment for its patrons, that includes persons in the state of nudity; or live performances which are characterized by an emphasis on depicting anatomical areas specified as less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a

point immediately above the top of the areola, and human genitals in a state of sexual arousal, or relating to sexual conduct or sexual excitement.

7. **Nudity** as defined in Massachusetts General Law c.272, S31

The condition of human male or female genitals or the breasts of the female while in a state of sexual stimulation or the sensual experiences of humans engaging in or witnessing sexual conduct of nudity.

### **6.16.3 Applicability**

Adult Entertainment Uses shall be prohibited in all zoning districts except for the General Commercial District.

Adult Cabarets, Adult Motion Picture Theaters and Establishments Which Display Live Nudity for its Patrons as defined in Section 6.16.2 shall only be allowed in the General Commercial district, and shall meet all other requirements of that district.

All Adult Entertainment Uses may be permitted only upon granting of a special permit by the Zoning Board of Appeals.

**6.16.4 Application Procedures and Submittal Requirements.** Applications for a special permit under this section shall comply with the requirements of the Special Permit and Site Plan Approval, Sections 7.3 and 7.4 of this Bylaw. In addition to the submittal requirements of Sections 7.3 and 7.4 the special permit application and site plan shall include the following information:

1. The name and address of the legal owner of the establishment, the legal owner of the property, and the manager of the proposed establishment.
2. The distances between the proposed adult entertainment use and the property line of all uses listed in Section 6.16.5 of this provision.

**6.16.5 Criteria for Approval.** The Zoning Board of Appeals may issue a special permit for an Adult Entertainment Use only if the following minimum criteria are met.

1. Adult Entertainment Uses shall not be located within:
  - (a) 200 feet from any residence.
  - (b) 1000 feet from any public or private school, state approved childcare facility, or nursery school.
  - (c) 1000 feet from any church or other facility used for religious purposes.
  - (d) 1000 feet from any public park, playground.

(e) 1000 feet from any other adult entertainment use within the General Commercial district.

(f) 1000 feet from any Industrial District.

(g) 500 feet from any establishment licensed under M.G.L. c138, S12.

Measure of Distance: The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest boundary line of any of the other designated uses set forth above.

2. Adult Book Stores, Adult Paraphernalia Stores and Adult Video Stores as defined in Section 6.16.2 shall not be permitted to open for business earlier than 8:00 A.M. and close no later than 1:00 A.M.
3. Adult Cabarets and Establishments Which Display Live Nudity for its Patrons as defined in Section 6.16.2 shall not be permitted to open for business earlier than 11:00 A.M. and close not later than 1:00 A.M.
4. No adult entertainment use special permit shall be issued to any persons convicted of violating the provisions of M.G.L. c.119, S63 or M.G.L. c.272, S28.
5. All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
6. No adult entertainment use shall be allowed to display for advertisements or other purpose any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent material any sexually oriented material as defined in M.G.L. c.272, S31.
7. No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
8. No adult entertainment use shall have any flashing lights visible from outside the establishment.
9. No adult entertainment use shall have a freestanding accessory sign.
10. Any special permit granted for an adult entertainment use shall be personal to the applicant, shall not run with the land and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject's property/business.

11. Any adult entertainment use granted a special permit shall comply with all other Town Bylaws and all statutes of the Commonwealth of Massachusetts regarding public nuisances, sexual conduct, lewdness, obscene or harmful matter or the exhibition or public display thereof.

**6.16.6 Conditions, Safeguards, Limitations for Adult Entertainment Uses.** In granting a special permit, the Zoning Board of Appeals may impose additional conditions, safeguards and limitations on the permit including but not limited to additional buffer zones, or screening.

**6.16.7 Expiration.** Any adult entertainment use special permit granted shall expire after a period of one calendar year from its date of issuance and shall be automatically renewable for successive one year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon the public safety factors applied at the time that the original special permit was granted, conditions imposed by the special permit granting authority at the time the permit was issued or renewed and violations of the bylaw itself.

**6.16.8 Pre-Existing Adult Entertainment Uses.** Any existing adult entertainment use shall apply for a special permit from the Zoning Board of Appeals within 90 days following the adoption of this bylaw. Existing adult entertainment establishments are exempt from the criteria of Section 6.16.5.

**6.16.9 Severability.** The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

## **SECTION 7.0 - ADMINISTRATION AND ENFORCEMENT**

### **7.1 BOARD OF APPEALS**

1. There shall be a Board of Appeals, appointed by the Board of Selectmen, consisting of five (5) members appointed for terms of such length and so arranged that the term of one appointee shall expire each year. There shall also be appointed three (3) associate members for a term of three years. No person holding an elective office shall be eligible to serve as a member or associate member of the Board of Appeals.

2. The Board of Appeals shall have the powers as set forth in Massachusetts General Law, Chapter 40A, Section 14. The Board of Appeals may not grant a use variance.



3. Special permits shall only be issued after a public hearing which must be held within 65 days after the date of filing a special permit application with the Town Clerk who shall transmit the application to the Board of Appeals.
4. Amendments to Zoning By-laws. The Planning Board upon its own initiative may, or upon the petition of five or more land owners in the Town of Monson, hold a public hearing for the consideration of any amendments to the zoning map or to this Bylaw, and shall report to a regular or special Town Meeting its recommendations as to what action should be taken.
5. Repetitive Petitions Before Town Meeting. No proposed Bylaw making a change in this zoning Bylaw, which has been unfavorably acted upon by the Town Meeting, shall be considered on its merits by the Town Meeting within two (2) years after the date of such action, unless adoption of such proposed Bylaw is recommended in the final report of the Planning Board, as required by the General Law.
6. Repetitive Petitions Before the Board of Appeals. No appeal, application, nor petition which has been unfavorably and finally acted upon by the Board of Appeals shall be acted upon favorably within two years after the date of the final unfavorable action unless the Board of Appeals finds, by a vote of four members of the five-member Board, specific and material changes in conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one member of the Planning Board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.
7. Repeal. Any existing Bylaw or parts thereof inconsistent with this Bylaw is hereby repealed.
8. Validity. The invalidity of any section or provision of the Bylaw shall not invalidate any other section or provision thereof.

## **7.2 ENFORCEMENT OF ZONING BYLAW**

**7.2.1** This Bylaw shall be enforced by the Zoning Enforcement Officer, who shall be appointed annually by the Board of Selectmen in the month of March to take office on the first day of April. He shall approve no applications for permits required under this Bylaw for a building of any kind for which plans and specifications, and intended use, are not in all respects in conformity with this Bylaw. He shall have full authority to prosecute in any court of competent jurisdiction any action, suit, or proceeding for the enforcement of this Bylaw.

**7.2.2** No building, no tent and no structure shall be placed, erected, or added to without a Zoning Permit issued by the Zoning Enforcement Officer. Said permit will be valid for a period not to exceed six months. A record of such applications, and the drawing and plans herein referred to, action taken thereon, shall be kept on file in the Town office.

**7.2.3** Except as provided in Section 7.2.4, no zoning permit involving a new structure shall be issued until the following requirements are met:

1. A drawing of the lot, in duplicate, drawn to scale, showing the dimensions of the lot and location, and size of buildings or structure existing on the lot, shall be filed.
2. Duplicate plans of the proposed buildings or structures with sufficient detail to show conformity to these Bylaws shall be filed.
3. All corners of the lot marked with iron pins, or stone bound.
4. Approval under Board of Health rules and regulations of a sanitary waste disposal facility

**7.2.4** A zoning permit for additions to existing structures will require a lot surveyed only where an addition may, in the Zoning Officer's judgement, reduce any required yard, and will require percolation tests only where human occupancy of the building will be increased by additions.

**7.2.5** If the Zoning Enforcement Officer shall be informed or have reason to believe that any provision of this Bylaw or any permit or decision thereunder has been, is being, or is about to be violated, he shall make an investigation of the facts, including the inspection of the premises where the violations may exist. Where written complaint is made to the Zoning Enforcement Officer, he shall take action upon such complaint within 14 days of receipt thereof and shall report such action in writing to the complainant and Planning Board.

**7.2.6** If the Zoning Enforcement Officer finds no violation or prospective violation, any person aggrieved by his decision, or any officer or Board of the Town, may within 30 days appeal to the Board of Appeals.

**7.2.7 Penalties.** Any person violating any of the provisions of the Bylaw, the conditions of a permit granted under this Bylaw or any decisions rendered by the Zoning Board of Appeals or the Planning Board shall be liable to a fine of not more than three hundred dollars (\$300) for each violation, any such fines to be enforceable through the Superior Court or Housing Court. Each day such violation continues shall constitute a separate offense.

In addition to the procedures for enforcement described above, the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decision rendered by the Zoning Board of Appeals or the Planning Board under this Bylaw, may be enforced by the Zoning Enforcement Officer, by non-criminal complaint pursuant to the provisions of Massachusetts General Law, Chapter 40, Section 21d. The fine for any violation disposed of through this procedure shall be fifty dollars (\$50.00) for each offense. Each day such violation continues shall be deemed a separate offense.

Prior to the imposition of any fine for a non-criminal complaint fine, written notice of the nature of the violation shall be given to the person or persons against whom the fine is to be imposed.

Said notice shall state the first date upon which fine shall be imposed for a continuing violation of the Bylaw, which date shall not be less than twenty-one (21) days from the receipt of said notice and which shall contain reference to each specific Section of the Bylaw which is being violated together with a statement of the penalty for said violation.

**7.2.8** Construction or operations under a building permit or special permit shall conform to any subsequent amendment of this Bylaw unless the use of construction is commenced within a period of one year after issuance of the permit; additionally, in cases involving construction begun with such one-year period, such construction shall be continued through to completion as continuously and expeditiously as is reasonable.

### **7.3 SPECIAL PERMITS**

Special permits are requested for certain uses, structures or conditions as specified in Section 3.1, Schedule of Use Regulations.

**7.3.1 Purpose.** Special permits are intended to provide detailed review of certain uses and structures, which may have substantial impact upon traffic, utility systems, and the character of the Town, among other things. The Special Permit review process is intended to ensure a harmonious relationship between proposed development and its surroundings, and ensure the proposals are consistent with the purpose and intent of this Bylaw.

**7.3.2 Special Permit Granting Authorities.** As specified in Section 3.1, Schedule of Use Regulations.

**7.3.3 Special Permit Procedures.** Special permits may be issued by special permit granting authorities in accordance with Mass. General Laws Chapter 40a, Section 9 and with the following regulations.

**7.3.4 Public Hearing.** Special permits shall only be issued following a public hearing held within sixty-five (65) days after filing an application with the special permit granting authority, a copy of is to be given to the Town Clerk by the applicant. The special permit granting authority will take final action on an application for special permit within ninety (90) days following the public hearing. Failure to do so will constitute approval. A unanimous vote of a three-member Board and a vote of at least four members of a five-member Board is required.

#### **7.3.5 Application Procedures**

1. All applications for special permits shall be made in writing on forms furnished by the Town Clerk and located in the Town Clerk's office and shall be accompanied by a site plan when required in accordance with Section 3.1, Schedule of Use Regulations.
2. Misrepresentation of any of the required plan items shall be cause to revoke a special permit.

**7.3.6 Expiration.** All special permits that have no time restrictions imposed by the special permit granting authority shall lapse within two (2) years from the date the permit was granted, unless substantial use or construction has commenced and continues regularly.

**7.3.7 Review Procedures.** The Special Permit Granting Authority shall submit one copy of said application and plan to the Board of Appeals, the Planning Board, the Board of Health, and the Conservation Commission for their review. The Boards and Commissions shall within thirty (30) days make recommendations as they deem appropriate and shall send copies thereof to the Special Permit Granting Authority and to the applicant in accordance with Chapter 40A, Section 11 of the Massachusetts General Laws.

**7.3.8 Criteria.** Where a special permit may be authorized by the Special Permit Granting Authority under this Bylaw, said Authority may grant, upon written application, such special permit if it finds, among other things:

1. That the proposed use would be suitably located in the neighborhood in which it is proposed and/or the total Town;
2. That the use will be reasonably compatible with the character and scale of other uses permitted as of right in the same district;
3. That adequate and appropriate facilities will be provided for the proper operation of the proposed use, including special attention to safe vehicular circulation;
4. The proposed use shall comply with the environmental performance standards specified in Section 5.1 of this Bylaw;
5. The proposed use shall comply with any and all additional special permit criteria or General Regulations imposed on individual uses in Section 5 of this Bylaw;
6. The proposal will not create traffic congestion or impair pedestrian safety. Provision shall be made for convenient and safe vehicular and pedestrian circulation within the site and in relation to adjacent streets, property or improvements;
7. The proposed project shall not create a significant adverse impact to the quality of surface water or groundwater during and after construction, and provision shall be made for maximizing groundwater recharge;
8. The design of the project shall provide for adequate methods of disposal of sewage, refuse or other wastes generated by the proposed use;
9. The design of the project shall minimize the visibility of visually degrading elements and protect the neighboring properties from potentially detrimental or offensive uses through the use of screening or vegetated buffer zones.

10. In reviewing site plans submitted with a special permit application, the Special Granting Authority shall consider the site plan submittal and approval requirements of Section 7.4.

**7.3.9 Conditions, Safeguards, Limitations.** In granting a special permit, the Special Permit Granting Authority may, in accordance with MGL Chapter 40A, impose conditions, safeguards, and limitations. Such conditions, safeguards, and limitations shall be in writing and may include but are not limited to the following:

1. Setback, front, side and rear, as a minimum in accordance with the minimum required in this Bylaw.
2. Screening of parking areas of other parts of the premises from adjoining properties or from streets by the use of walls, fences, plantings or other such devices.
3. Limitations of size, number of occupants, method or time of operation or extent of facilities.
4. Modification of the exterior design or appearance of buildings, structures, signs, or landscape materials.
5. Additional parking, loading or traffic requirements beyond the minimum required in the Bylaw.
6. Measure to protect against environmental pollution.
7. Performance bond or other security to ensure that the project meets the conditions specified in the special permit.

**7.3.10 Changes, Alterations, Expansion.** Any substantial change, alteration or expansion of use allowed by special permit shall require a special permit from the appropriate Special Permit Granting Authority.

## **7.4 SITE PLAN APPROVAL**

**7.4.1 Projects Requiring Site Plan Approval.** No special permit or building permit shall be issued for any of the following uses unless the Planning Board has endorsed a site plan:

1. The construction or exterior alteration of a commercial structure;
2. The construction or exterior alteration of an industrial structure;
3. Residential developments requiring approval under the Subdivision Control Law (M.G.L. Chapter 41);

4. Any other use specified in Section 3.1, Schedule of Use Regulations, which indicates Site Plan Approval is required.

The Planning Board will seek consultation with other Boards, including but not limited to the following: Building Inspector, Board of Health, Board of Selectmen, Conservation Commission, Highway Department, Fire Department and Police Department. The Planning Board may waive any or all requirements of site plan review for external enlargements of structures of less than 25% of the existing floor area.

**7.4.2 Purpose.** The purpose of site plan approval is to further the purposes of this Bylaw and to ensure that new development is designed in a manner which reasonably protects visual and environmental qualities and property values of the Town, and to assure adequate drainage of surface water and safe vehicular access.

**7.4.3 Application.** Each application for Site Plan Approval shall be submitted to the Planning Board by the current owner of record, accompanied by ten (10) copies of the site plan. The Planning Board shall, within five days, transmit one copy each to the Building Inspector, Board of Health, Conservation Commission, Board of Selectmen, Highway Department, Fire Department and Police Department.

The Planning Board shall obtain with each submission, a deposit sufficient to cover any expenses connected with a public hearing and review of plans, including the costs of any engineering or planning consultant services necessary for review purposes.

**7.4.4 Required Site Plan Contents.** A registered architect, landscape architect, or professional engineer shall prepare all site plans unless this requirement is waived by the Planning Board because of unusually simple circumstances. All site plans shall be on standard 24" x 36" sheets and shall be prepared at a sufficient scale to show:

1. The location and boundaries of the lot, adjacent streets or ways, and the location and owners' names of all adjacent properties;
2. Existing and proposed topography including contours, the location of wetlands, streams, waterbodies, drainage swales, areas subject to flooding, and unique natural land features;
3. Existing and proposed structures, including dimensions and elevations;
4. The location of parking and loading areas, driveways, walkways, access and egress points;
5. The location and a description of all proposed septic systems, water supply, storm drainage systems, utilities, and refuse and other waste disposal methods;

6. Proposed landscape features including the location and a description of screening, fencing and plantings;
7. The location, dimensions, height and characteristics of proposed signs;
8. The location and a description of proposed open space or recreation areas;

#### **7.4.5 Procedures for Site Plan Review.**

1. The Planning Board shall refer copies of the application within 15 days to the Conservation Commission, Board of Health and Building Inspector, who shall review the application and submit their recommendations and comments to the Planning Board. Failure of Boards to make recommendations within 35 days of the referral of the application shall be deemed to be lack of opposition.
2. The Planning Board shall hold a public hearing within sixty-five (65) days of the receipt of an application and after due consideration of the recommendations of the other Boards, shall take final action within 90 days from the time of hearing.
3. The period of review for a special permit requiring site plan approval shall be the same as any other special permit and shall conform to the requirements of Chapter 40A, Section 9, "Special Permits". Specifically, a joint public hearing to address the Special Permit application and Site Plan Approval application shall be held within sixty-five (65) days of the filing of a special permit application with the Planning Board. The Planning Board shall then have 90 days following the public hearing in which to act.

**7.4.6 Site Plan Review Criteria.** The following criteria shall be considered by the aforementioned Boards in the review and evaluation of a site plan, consistent with a reasonable use of the site of the purposes permitted or permissible by the regulations of the district in which it is located:

1. If the proposal requires a special permit, it must conform to the special permit requirements as listed in Section 6.2 of this Bylaw.
2. The development shall be integrated into the existing terrain and surrounding landscape, and shall be designed to protect abutting properties and community amenities. Building sites shall, to the extent feasible: (a) minimize use of wetlands, steep slopes, floodplains, hilltops; (b) minimize obstruction of scenic views from publicly accessible locations; (c) preserve unique natural or historical features; (d) minimize tree, vegetation and soil removal and grade changes; and (e) maximize open space retention; and (f) screen objectionable features from neighboring properties and roadways.
3. Architectural style shall be compatible with the rural/historic character and scale of buildings in the neighborhood and the Town through the use of appropriate building materials, screening, breaks in roof and wall lines and other architectural techniques. Variation in detail, form and siting shall be used to provide visual interest and avoid

monotony. Proposed buildings shall relate harmoniously to each other with adequate light, air, circulation, and separation between buildings.

4. The development shall be served with adequate water supply and waste disposal systems. For structures to be served by on-site waste disposal systems, the applicant shall submit a septic system design prepared by a Certified Engineer and approved by the Board of Health.

5. The plan shall maximize the convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent ways. The plan shall describe estimated average daily and peak-hour vehicle trips to be generated by the site and traffic flow patterns for vehicles and pedestrians showing adequate access to and from the site and adequate circulation within the site.

6. The site plan shall show adequate measures to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels, increased run-off and potential for flooding. Drainage shall be designed so that runoff shall not be increased, groundwater recharge is maximized, and neighboring properties will not be adversely affected.

7. The development will not place excessive demands on Town services and infrastructure.

8. Electric, telephone, Cable TV, and other such utilities shall be underground where physically and environmentally feasible.

9. Exposed storage areas, machinery, service areas, truck loading areas, utility buildings and structures and other unsightly uses shall be set back or screened to protect the neighbors from objectionable features.

10. The site plan shall comply with any zoning requirements for parking, loading, dimensions, environmental performance standards, and all other provisions of this Bylaw.

Before approval of a site plan, the reviewing board may request the applicant to make modifications in the proposed design of the project to ensure that the above criteria are met.

**7.4.7 Final Action** The Planing Board's final action shall consist of either:

1. A determination that the proposed project will constitute a suitable development and is in compliance with the criteria set forth in this Bylaw;
2. A written denial of the application stating the reasons for such denial; or,
3. Approval subject to any conditions, modifications and restrictions as the Planning Board may deem necessary.

**7.4.8 Enforcement**



1. The Planning Board may require the posting of a bond to assure compliance with the plan and conditions and may suspend any permit or license when work is not performed as required.
2. Any special permit with site plan approval issued under this section shall lapse within one (1) year if a substantial use thereof has not commenced sooner except for good cause.
3. The Planning Board may periodically amend or add rules and regulations relating to the procedures and administration of this section.









